CTIM/TN/014

Islamic Financial Instrument & Transaction Study Group

Accounting And Taxation Issues In the Operation of Islamic Banking

TAX INCENTIVES FOR THE SERVICES SECTOR

WHAT IS THE MEANING OF MANUFACTURE?

● Price RM30.00
US$17.00

TAX NASIONAL

OFFICIAL JOURNAL OF THE MALAYSIAN INSTITUTE OF TAXATION
ISSN 0128-7850 KDN PP 7829/12/95
http://www.jaring.my/yes/mia/main.htm
QUARTERLY SEPTEMBER 1996

Accounting And Taxation Issues In The Operation Of Islamic Banking

Tax Incentives For The Services Sector

What is the meaning Of Manufacture?

Memorandum To The Honourable Finance Minister

Construction Industry Development Board Malaysia (CIDB)

Western Samoa - A Fast Emerging Offshore Centre In The Asia-Pacific Region

What is Venture Capital

Special Commissioners' Decisions

- Date Of Acquisition and Disposal Substantially For Shares
- Cumpulsory Payments Not Necessarily Deductitible
- Incomplete Records and Non-Disclosure
- Sale Of Property - RPGT Or Income Tax

Student's Section - Income Tax And The Four 'W's

Malaysian Institute of Taxation

C O N T E N T S

Accounting And Taxation Issues In The Operation Of Islamic Banking 1

Tax Incentives For The Services Sector 8

What is the meaning Of Manufacture? 12

Budget 1997 - Memorandum To The Honourable Finance Minister 18

Construction Industry Development Board Malaysia (CIDB) 29

Western Samoa - A Fast Emerging Offshore Centre In The Asia-Pacific Region 35

What is Venture Capital 37

Special Commissioners' Decisions

Date Of Acquisition and Disposal Substantially For Shares 43

Cumpulsory Payments Not Necessarily Deductitible 44

Incomplete Records and Non-Disclosure 45

Sale Of Property - RPGT Or Income Tax 46

MIT Examination 47

Institute's News 48

Custom's Department 54

Student's Section - Income Tax And The Four 'W's 56

Rules and Regulations 59

OFFICE & ADDRESS

The Secretariat, Malaysian Institute of Taxation, Level 4, Dewan Akauntan, No. 2, Jalan Tun Sambanthan 3, Brickfields, 50470 Kuala Lumpur. Tel: 03-274 5055. Fax: 03-274 1783.

The Tax Nasional is the official publication of the Malaysian Institute of Taxation and is distributed free to all members of the Institute. The views expressed in this Journal are not necessarily those of the Institute or its Council. All contributions, inquiries and correspondence should be addressed to the Secretariat of the Institute.

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

The objectives of the Institute are, inter alia:

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

COUNCIL MEMBERS

President : Ahmad Mustapha Ghazali PA(M), FTII, FCCA, CPA.
Deputy President : Micheal Loh FTII, MBA.
Vice Presidents : Hamzah HM Saman KMN, FTII.
Chow Kee Kan PA(M), FTII, ACCA.
Secretary : Chuah Soon Guan RA(M), ATII, CPA
Members : Abdul Hamid bin Mohd Hassan ATII, FBIM.
Atarek Kamil Ibrahim PA(M), ATII, FCCA.
Harpal S. Dhillon RA(M), ATII, FCCA, LLB (HONS)., LLM.
Kang Beng Hoe ATII.
Lee Yat Kong PA(M), ATII, AASA, CPA.
Quah Poh Keat PA(M), ATII, CIMA, ACCA.
Ranjit Singh FTII, B. ECONS. (HONS).
Seah Cheoh Wah PA(M), ATII, ACA.
Teh Siew Lin PA(M), ATII, B.Sc (ECONS.), ACA.
Thanneermalai s/o SP SM Somasundaram PA(M), ATII.
Veerinderjeet Singh RA(M), ATII, CPA (M), B. Acc. (Hons).

EDITORIAL BOARD

Advisors : Ahmad Mustapha Ghazali PA(M), FTII, FCCA, CPA.
Hamzah HM Saman KMN, FTII.
Teh Siew Lin PA(M), ATII, B. Sc. (ECONS), ACA.
Editor : Harpal S Dhillon RA(M), ATII, FCCA, LLB (HONS)., LLM
Deputy Editor : Chuah Soon Guan RA(M), ATII, CPA.

1. Practitioners' Division
Associate Editors:
Banking & Finance Baldev Singh ATII.
Case Law Ranjit Singh FTII, B. ECONS. (HONS).
Incentives Chooi Tat Chew ATII.
Indirect Tax Fabian Pereira
International Tax Richard Thornton ATII (UK), FCA.
Legislation Lee Lee Kim ATII, B. ECONS. (HONS).
Oil & Gas Chin Pak Weng ATII.
Stamp Duties E. J. Lopez

2. Research Division
Associate Editors: Chan Yoong Lai Thye
Dr. Siti Normala
Veerinderjeet Singh

3. Revenue Chamber : Arjunan Subramaniam
WSW Davidson
P. S. Gill
James Loh
Teoh Lian Ee

Secretary & Advertisements Officer : Ho Foong Chin B. ECONS, LLB (HONS)

ACCOUNTING AND TAXATION ISSUES IN THE OPERATION OF ISLAMIC BANKING

By
*Mustapha Hamat**

INTRODUCTION

The objective of this paper is to discuss depositor-bank and bank-entrepreneur relationships and their implications on the prevailing accounting standards. The paper firstly discusses the depositor-bank and the bank-entrepreneur relationships highlighting differences between the relationships in the conventional interest-based and Islamic banking. Secondly, the paper discusses the implications of the depositors-bank and bank-entrepreneur relationships on the prevailing accounting standards. Thirdly, the paper briefly discusses the need for a dual-accounting system in the operation of 'Sistem Perbankan Tanpa Faedah' (SPTF)**.

Finally, the paper touches briefly on taxation issues arising from banking transaction conducted according to the Shariah principles.

DEPOSITOR-BANK AND BANK ENTREPRENEUR RELATIONSHIPS

Banker-customer relationships

The conventional bank may employ deposits collected in whatever manner it wishes, but it is under an obligation to repay on demand up to the amount originally deposited, with interest, if so agreed to. So in this context the bank-customer relationship is of that a lender-borrower. While maintaining this basic relationship, bank-customer relationships have progressed gradually to include relationships such as lessor-lessee relationship, factor-client relationship, principle-agent relationship and many others.

In the case of Islamic banking, the depositor-bank relationship can be structured based on any of the following principles:-

i. Al-Mudharabah (trustee financing)

ii. Al-Wadiah (safe keeping)

iii. Al-Qard al-Hassan (benevolent loan)

Under the first principle the depositor-bank relationship is of partnership in nature, not of debtor-creditor relationship, while under the second principle, the relationship is of custodian in nature.

In the area of application of funds the relationship can be structured based on any of following principles:

i. Mudharabah

ii. Bai Muajjal (deferred payment sale)

iii. Shirka Inan — joint-venture

iv. Shirka Inan — joint-stock company

v. Ijara (leasing)

vi. Bai Salam (purchase made with advance payment)

vii. Direct investment

viii. Qardhu Hassanah

ix. Muzaraah and Musaqaat

The relationship under the first, third, fourth and eight principles is of partnership in nature. While under second, fifth and sixth is of buyer-seller relationship. The only principle that retains the traditional debtor-creditor relationship is under the Qard Hassan principle.

The uniqueness of the depositor-bank and bank-entrepreneur relationships in the Operation of Islamic Banking gives rise to a number of accounting issues which will be discussed in Section 3 of this paper.

IMPLICATIONS OF CHANGES IN DEPOSITOR-BANK AND BANK-ENTREPRENEUR RELATIONSHIPS

The type of accounting system to be adopted for Islamic banks are essentially those that can reflect various Bank-customer relationships. Some of the important characteristics are as follows:

1. Fund accounting

The funds that are available for the Islamic banks to invest are managed according to the type and nature of contractual

---

* The writer is a staff of Bank Islam Malaysia Berhad (BIMB). Views and opinion expressed in this paper do not necessarily represent the official view and opinion of BIMB

** Interest-free (Islamic banking products) offered by the conventional interest-based banking system.

relationships. The shareholders' fund which is received by the bank on the basis of al-Musharakah is managed separately from the fund received from depositors. Deposits received under conditional Mudharabah principles are separated from deposits received based on other principles. As such one of the important features of the accounting system in Islamic banking is one accounting entity for each fund. However, when it comes to the annual financial statement all funds are amalgamated under a broader heading such as depositors' fund.

2. Modified cash basis — income recognition

A substantial portion of deposit received by the Islamic banks is structured on the principle of al-Mudharabah. This principle involves the distribution of cash profit, either periodically or at the end of the Mudharabah period. If recognition of income is to be made on an accrual basis, distribution of profit requires Islamic banks to advance cash from other sources before liquidation of receivable account is made. If the account turns bad, the Bank have to use their own fund to make good for the losses. As such it violates one of the conditions of Al-Mudharabah contract that says that the loss should be borne by the owners of capital.

According to the Shafie School of Law, in this situation the profit which was distributed has to be treated as refund of capital. Therefore, to avoid this problem, Islamic banks usually adopt cash basis rather than accrual in the recognition of income.

3. Reflection of the Shariah condition

As far as possible all Shariah requirements should be reflected by the accounting transaction. For example transactions conducted on the basis of Shariah principle of Al-Bai Bithaman Ajil consist of the following steps:

i. Bank buys houses from developer and pay cash;

ii. Bank sells the houses to customer at cost plus margin of profit;

The accounting entry for these transactions are as follows:

Bank buys house from developer and pay cash

Dr. Cost of the house
 Cr. Bankers Cheque

Bank sells the house to the customer on deferred payment basis.

Dr. Bai Bithaman Ajil Financing (Cost + profit)
 Cr. Cost of the house (cost)
 Cr. Unearned profit (margin of profit)

As depicted by the above illustration the Bank can do away with the debit and credit entries of cost of the house as they cancel each other. However, to reflect the substance of the transaction a set of entries relating to cost of the house is still effected in the bank's book.

Another aspect in this case is the reflection of Shariah principle in the categorization of assets and liabilities.

Categorisation of assets and liabilities of various funds is based on the Shariah principles such as al-Bai Bithaman Ajil, Al-Murabahah, Al-Mudharabah and a few others.

2. Disclosure of Accounting Policies (IAS1)

In reporting the results of the bank's operation and presentation of financial position, the bank has first to observe, after taking care of Shariah requirements, the detailed disclosure requirements outlined in the Ninth Schedule of the Companies Act 1965 and the Bank Negara Malaysia directive such as GP.8 the Model Islamic Bank guidelines.

For example Para l(a) of the schedule requires the OPERATING REVENUES to be disclosed in the profit and loss account. The same para also requires that the basis on which the income is determined be stated. In this particular case, IAS1 has been adopted to be the standards with regards to the disclosure of significant accounting policies. Para 16 of the LAS1 states that going concern, consistency and accrual are the fundamental assumptions in preparing accounting reports. Therefore it is not necessary to disclose it in the financial statements. However, should there be any departure or modification to the standards the fact must be properly disclosed.

BIMB is required to observe this standard. As it operates on cash basis or modified cash basis where the income is recognised only when it falls due and cash is actually received, the fact is disclosed in notes to the account under the caption of "Significant Accounting Policies". The same standards are also practiced in U.K. and U.S.A. They are covered by the SSAP2 and Opinion 22 of the APB (1972)[1].

AASB[2] in the Statement of Accounting Standard

(1) APB Opinion No. 22, Notes

(2) Accounting and Auditing Standards Board of Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI)

No. 1 requires a similar disclosure to be made with regard to the Disclosure of Significant Accounting Policies.

Another issue that relates to the disclosure of accounting policies is DEPRECIATION.

There is no direct Shariah implication with regards to depreciation. Therefore for the purpose of conservatism and prudent banking practices, BIMB adopted the standard in its financial reporting. However, the indirect implication may occur when the **customers' deposits are accepted on the basis of Mudharabah principle and the Islamic banks adopt the view that operational costs can be deducted from the Mudharabah revenue**. It will be charged to the pre-distribution profit. The effects is that the distributable profit will be reduced by the amount of depreciation. In this case, disclosure with regards to which account it is charged, need not be done as the disclosure of Shariah principle underlying the acceptance of deposits will be sufficient for readers to understand the way in which depreciation is charged.

The recognition of profit portion will depend on the method used. There are a number of acceptable methods that have been adopted by financial institutions and banks. The common ones are by sum of digit, constant rate of return and straight line methods.. Applying any of these methods will enable the banks to separate the recovery of cost and profit from monthly, or quarterly and semi-annually repayments received from customers. This standard practice has been accepted by the revenue law in some countries and does not violate the requirements of Shariah. As far as presentation is concerned, the 'standard relating to the accounting conventions will apply. Therefore the amount to be reflected in the financial statement is the total receivable balance less the profit portion that is not due.

AASB is in the process of issuing a separate standard relating to the long-term Murabahah. Issues covered by the proposed standards are quite similar to those covered by IAS18 such as method of income recognition, allocation of profit to relevant period, etc.

4. Lease Financing

Para 49, IAS17 requires that recognition of income under finance lease be based on a pattern reflecting a consistent periodic rate of return on lessors' net investment outstanding, and the method should be applied consistently. In the case of operational lease (para 52) rental income should be recognised on a straight line basis over the lease term unless another systematic basis is found to be more representative of the time pattern of the earning process continuing in the lease.

There is no Shariah complication as far as the straight forward leasing arrangement is concerned. However, in the case where the profit margin is tied up tot he interest rate such as LIBOR, BLR, etc., the arrangement is not permitted by Shariah as it creates gharar (uncertainties). The lessees' total rental payable or the banks total rental incomes now vary according to changes in the interest rate unless are broken down in a series of lease agreement and each agreement is based on one particular rental rate. With regards to the method of income recognition it is an administrative matter; no Shariah complication arises here. It is up to the management to decide on which method is to be adopted, so long as it is just and fair, but the method used must be of the systematic kind and must be reflective of the constant periodic rate of return as required by IAS17.

As far as presentation is concerned, Shariah does not impose any condition. As such, what BIMB does it to observe the requirements of the existing accounting conventions and standards, such as LAS17, FASB 13-29, and APB 5,7,27 and31 or SSAP21. According to these standards, the lease asset will not be recorded as fixed assets in the balance sheet, but it will be recorded as lease receivable less the profit margin that is not received. In the case of operating lease, the lease assets should be recorded as fixed assets in the balance sheet of the lessor. As such depreciation for these assets is provided for periodically. AASB currently is in the process of formulating the standard for al-Ijarah financing.

5. Accounting for Foreign Currency Transactions

Reporting of transactions that are conducted, or assets and liabilities that are stated, in currencies other than the reporting currency is subject to a number of variations. These variations arise mainly from the methods selected for translation, and the treatment of the differences arising from the applications of these methods. BIMB translates its foreign currency transactions into Malaysian Ringgit at the rate of exchange that rule at the dates of realisation of the transactions. However, the assets and liabilities on the balance sheet are stated at the rate of exchange that rule on the dates of transactions. Gains or losses resulting from this translation are only recognised when realised, in accordance with the cash basis of accounting.

Conceptually, the variations in Shariah principles adopted in accepting deposit and giving out financing should reflect the methods of translation used by Islamic banks. Therefore the question as to whether the transactions or assets and

liabilities belong to the shareholders' fund or customers' deposit should be asked, and if they belong to customers' deposit, whether they arise from Murabahah or Musharakah or any other form of financing. If the transactions or assets and liabilities belong to the shareholders' fund, no Shariah complications will arise. However, if they belong to customers' deposit (assuming the deposit is accepted on Mudharabah principle) the method chosen for the translating of foreign currencies must reflect the terms and conditions of the Mudharabah contract made with the depositors, as well as the contract which the Islamic banks used in investing their funds. For example, using the exchange rates prevailing on the dates of realisation for Murabahah transactions, utilising Mudharabah funds is more reflective of the terms and conditions of the contract with the depositors.

The gains from foreign currency translations can be distributed to the depositors as such gains arise from completed and realised transactions. According to the Shafie School of Thought, profit distributed to the owner of capital while the capital fund is still being tied up to the stockkin trade or other forms of working capital, may not stand. In such cases where the stocks are damaged or debtors' accounts became uncollectible and the businesses consequently suffer losses, it will turn and become a refund of capital. The portion received by the entrepreneurs will have to be refunded to the owner of capital as part of his capital [3].

Therefore, based on this view, only realised foreign exchange gains can be distributed. As such, the method adopted by BIMB is closer to the requirements of this view.

The main issue in this case is not the debate on whether or not the method adopted is Shariah. What is more important here is the flexibility in adopting the methods for translating the foreign exchange transactions, allowed by the Shariah, which requires sufficient disclosures. In this particular case, it is felt that the existing standards found in IAS21, SSAP20 and FASB#52, may not be adequate as they do not cover the Shariah aspects of the issues. The readers of financial statements will not be able to understand why a particular method of translation is used, what are their relevant Shariah principles are, and their effects on the profit and loss account and balance sheet. Therefore in this case, new accounting standards may need to be formulated. The proposed standard must outline the disclosure requirement with regard to the foreign exchange translation, the underlying Shariah principles and the method adopted for the translation. MSB deals with this matter in Statement No. 1.

6. Provision for Doubtful and Bad Accounts

As mentioned in the earlier part of this paper, prudent banking practices require that provision for doubtful and bad debts be created and maintained at a certain level in order to reflect the realistic and collectible balance of financing and investment. Such prudent and conservative management of the bank's assets and liabilities is not contrary to the requirement of Shariah, so long as the Islamic banks try to be fair and just in dealing with depositors. Maliki and Hanafi have allowed the charging of such provisions to the predistribution profit.

In the case of bad accounts, they may have to be revalued to determine the extent of the loss to be specifically provided for.

In line with the break nature of loss as dictated by the Shariah principle of al-Mudharabah, and in order to maintain fairness to the banks' present and future depositors, the valuation is based on the gross realisable value of the account, that is, the actual amount of what remains from the outstanding cost of financing plus the expected profit that may be further generated from this amount[4].

The procedure of realising income from monthly or quarterly installment of the subsequent financing arrangement should be abandoned. Instead, all payments received will be treated in full as recovery of outstanding cost of financing plus all incidental expenses thereto until this amount is fully recovered. Subsequently, all these incomes will be credited in full to the earned profit account.

No accounting standards exist at the moment that directly deal with this issue other than the standard mentioned in IAS1, SSAP2, OPB Opinion #22 and FASB # 15. As the issue is directly related to the terms and conditions of Mudharabah contract it is felt that the existing accounting standards are very much inadequate to deal with the matter. A new standard encompassing Shariah as well as accounting aspect should be formulated in order for Islamic banks' financial statements to be more informative and meaningful. AASB has yet to come up with standard for the provision for doubtful and bad financing.

REQUIREMENT FOR DUAL-ACCOUNTING SYSTEM

Conventional banks which mobilize deposits on the basis of interest-free principle ideally should manage the fund separately from funds received from conven-

[3] (Al-Jazin, abdill Rahman, Al-Raqh Al-Mezahib Arbaah, Undated p. 61

[4] Ibid, - 62

tional banking operations. All interest-free deposits should be used in interest-free or Shariah permitted investments. As such it is imperative that separate books of accounts be kept for these funds, ideally a separate accounting entity. At the end of the accounting period separate statements of assets and liabilities and profit and loss accounts for each fund are prepared. Aggregation of interest-free fund accounts with the conventional banking operation accounts will only be made in the annual financial statement.

If the interest-free fund is managed and accounted for in the same account as the fund received from conventional banking operations, it will be very difficult for the banks to manage their investments, as they need to segregate income derived from the employment of interest-free deposit from that earned from interest-based deposit. In some cases it may lead to the use of interest-free fund for investment in non-halal assets.

Questions may be raised on how the banks are going to allocate overhead costs as the same premise, same computers, same persons and same facilities are used for interest-free and interest banking operations. Strictly speaking, all these facilities need to be segregated, but the issues such as practicality and cost factor need to be considered carefully. If it is impossible or impracticable to segregate, allocation on the basis of size of operation could be considered. However, I would suggest that the management of the banks after the issue to Shariah experts for a proper directive.

IMPLICATIONS OF ISLAMIC BANKING ON CURRENT TAX LAWS

As far as tax laws are concerned three Acts are directly affected by the operation of Islamic banking namely; Stamp Act 1949, Real Property Gains Tax Act 1976 and Incorrie Tax Act 1967.

The implications of Islamic banking on these Acts arise mainly due to the changes in contractual relationship between the bank and the customer and prohibition of interest in the bank's operation.

1. Changes/amendments to the Stamp Act 1949

For financing extended to the customer under Shariah principle of Al-Bai Bithaman Ajil, if based on the provisions of Stamp Act 1949 before the amendment, the customer would have to pay ad-valorem (or full) duty twice and the assessment is made on the actual consideration of the transaction.

Firstly, the customer would have to pay ad-valorem duty (based on the amount of financing) when the property is sold to the bank. Secondly, the customer would have to pay advalorem duty again when the property is sold by the bank to the customer and this time assessment is made on the sale price.

BIMB had accordingly obtained approval for the amendment of The Stamp Act 1949 (as amended by Act A 723 of 1989) by a new Section 14A which read in relation to financing under the principles of Shariah as follows:

"Where it is shown that a principal or primary security secures the repayment of moneys provided under a scheme of financing made according to the Shariah, duty chargeable thereon shall be calculated on the principal amount provided by the financier or financing body".

Pursuant to the said section, (where the bank for instance grants a financing to purchase a house) even though the agreement (primary security) will state the amount secured to be the sale price (that is the financing sum plus profit margin) the amount of the stamp duty chargeable on the agreement will be calculated based on the amount of financing provided by the bank.

To illustrate the implication further let us look at the example on FIGURE 1.

2. Changes/amendments to the Real Property Gains Tax (RPGT) Act 1976

The implications on the Real Property Gains Tax (RPGT) Act 1976 also relate to Al-Bai Bithaman Ajil financing. This mode of financing involves 'a purchase and sale transaction' between the bank and the customer and legally the transaction would amount to 'acquisition' and 'disposal' of the property and the 'gains' would be taxable under RPGT Act.

In view that the Sale Agreement by BIMB is an instrument under the financing procedure involving abank's stock-in-trade BIMB had sought direction from the Authorities that the gains from the transaction be treated as Zgross income" under Income Tax Act 1967 and not as Chargeable gainsX under RPGT Act.

The submission by BIMB led to the amendment of schedule 2 [by the introduction of new paragraph 3(g)] RPGT Act whereby gains made on transaction in respect of disposal of an asset by an Islamic

bank under a scheme where that person is financed by such bank in accordance with the Shariah, the gains are exempted from tax.

To illustrate the amendment further let us look at the example on FIGURE 2.

The amendment thus ensures that the customers of the bank are not burdened by an additional incidence of tax.

3. **Changes/amendtnents to Income Tax Act 1967**

Islamic banking affects the operation of Income Tax Act 1967 in the following cases:

(a) The Income Tax Act refers to 'interest' in its various provisions, be it in the computation of:

Taxable income for interest received, or outgoing and expenses allowed (during a certain period) including, sum payable by way of interest upon any money borrowed.

The Act however does not contain provision in respect of 'profits or gains and financial expenses pertaining to Islamic banking. '

To streamline this issue, the Income Tax Act was amended by inserting a new Section 2(7) as follows:

"Any reference in this Act to interest shall apply, mutatis mutandis, to gains or profits received and expenses incurred, in lieu of interest, in transactions conducted in accordance with the principles of Shariah".

This amendment enables the customers of BIMB to enjoy similar benefits enjoyed by the customers of conventional banks.

(b) Zakat is mandatory in the case of Islamic bank(s) licensed under Islamic Banking Act 1983 (IBA) but not for the conventional banks. However, for companies like BIMB zakat is not deductible either as allowable expenses under Section 33 of Income Tax Act or against tax liability.

As such certain portion of BIMB's income is currently taxed twice. This issue has not been resolved.

CONCLUSION

The flexibility allowed by the accounting conventions and the Shariah principle in adopting different accounting methods for the treatment of certain accounting issues leads to different results presented in the financial reporting. Therefore, unless proper disclosure with regard to the issues, the underlying Shariah principles and the accounting methods adopted is made, the information contained in the financial statement will not be useful for comparison of the performances of different Islamic banks. Insufficient disclosure of the underlying Shariah principles will subject the Islamic banks' activities to a lot of questions. Therefore the need for standard accounting practices in the reporting of Islamic banks' operation is very obvious.

However this does not mean that Islamic banks must come up with complete sets of new accounting standards. The existing standards can continue to be applicable, so long as they do not go against the requirements of Shariah. As mentioned earlier, most of the accounting issues found in the operation of Islamic banks fall within the scope of existing accounting practices/standards. Therefore, in this case, there is no need for the new standards to be formulated. If the observation of certain standards is contrary to the Shariah, the standards can still continue to be adopted, but with some modifications as illustrated in the earlier part of this paper in the case of Standard relating to the Disclosure of Significant Accounting Policies and the Information to be Disclosed in financial statements.

In certain cases however, such as the provision for doubtful and bad debt and foreign exchange translation, a new set of accounting standards needs to be formulated as the existing standards do not cover this issue, or if it does, the coverage is inadequate.

The change in the Bank-customer and Bank-entrepreneur relationships have also affect the position of current taxation Laws. Amendment to these laws was made to ensure that the working of these laws is in line with the operation of Islamic banking.

AMENDMENT OF STAMP ACT
Example (Para 3.1) -Bank grants financing under Al-Bai Bithaman Ajil (BBA) of RM100,000.

FIGURE 1

AMENDMENT OF STAMP ACT

Example (Para 3.1) - Bank grants financing under A1-Bai Bithaman Ajil (BBA) of RM100,000

TRANSACTIONS	STAMP DUTY PAYABLE	
	BEFORE AMENDMENT	AFTER AMENDMENT
Bank purchases property from Customer for RM100,000	Stamp duty payable on Purchase Agreement - 1% of RMl00,000 = RM1,000	Stamp duty payable on Purchase Agreement - EXEMPTED
Bank sells property to Customer on deferred payment sales (BBA) over X years at RM140,000	Stamp duty payable on Sale Agreement - 1 % on 1 st RM 100,000 = RM l ,000 - 2% on balance (RM40,000) = RM 800 RM l,800	Stamp duty payable on Sale Agreement - 0.5% on 1st RM100,000= RM500 - on balance (RM40,000) = duty remitted and not charged.
TOTAL STAMP DUTY	RM2,800	RM500

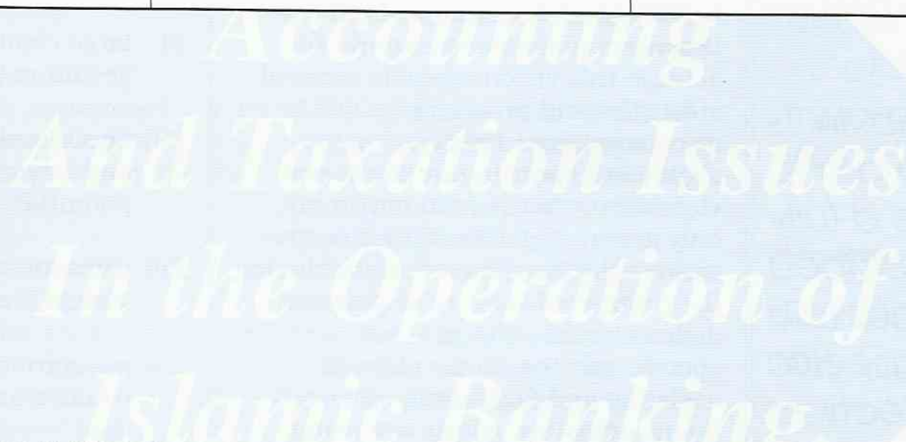


FIGURE 2

AMENDMENT OF REAL PROPERTY GAINS TAX (RPGT) ACT

Example (Para 3.2) - Bank grants financing under A1-Bai Bithaman Ajil (BBA) of RM100,000

TRANSACTIONS	RPGT PAYABLE	
	BEFORE AMENDMENT	AFTER AMENDMENT
Bank purchases property from Customer for RM100,000 (Acquisition Price)	No RPGT payable	No RPGT payable
Bank sells property to Customer on deferred payment sales (BBA) over X years at RM140,000 (Disposal Price)	Bank is liable to tax on RM40,000 (RM140,000 - RM100,000) being chargeable gains - 20% on RM40,000 = RM 8,000	Although Bank is liable to tax on the chargeable gains of RM40,000, the gains are specifically exempted from tax.
TOTAL RPGT	RM8,000	NIL

Tax Incentives For The Services Sector

Malaysia, in its surge forward to become a fully developed nation has laid down specific goals, objectives and strategies

Malaysia, in its surge forward to become a fully developed nation has laid down specific goals, objectives and strategies. The principal thrust will be the promotion of a more balanced, broad-based, resilient and internationally competitive economy. To achieve this vision, specific sectoral strategies and programmes will be given emphasis. Recognizing the significant contribution of the services sector to the economy in not only generating value added output and employment but also in reducing the protracted balance of payment deficits in the services trade, and the specific role the sector plays in assisting and facilitating other economic activities, efforts are being made to identify policies and appropriate strategies to develop the services sector to enable it to play a leading role in the economy.

The Government has identified certain sub-sectors viz transportation, communications and utilities within the services sector which are currently prominent and are of emerging importance. It is envisaged that investments in selected projects in selected projects in these three sub-sectors will improve the climate for economic growth in the country and provide linkages for growth in other sectors of the economy. In this regard, in the 1996 Budget, the Government has provided a range of tax incentives and facilities to promote investments in selected projects in the transportation, communications and utilities sub-sectors of the services sector. These projects have to be approved by the Minister of Finance and are referred to as Approved Service Projects (ASP). The following criteria are considered in approving tax incentives for ASP namely:

(i) large capital investments and long gestation period;

(ii) import substitution and export and foreign exchange earning potential;

(iii) utilization and transfer of advanced technology;

(iv) generation of employment opportunities and utilization of expertise;

(v) imposition of tariffs controlled by government;

(vi) contribution towards efficiency of other sectors of the economy.

The main tax incentives proposed for ASP are either income tax exemption under Section 127 or Investment Allowance (IA) under Schedule 7B of the Income Tax Act 1967. The type of tax incentives and the quantum available to ASP are based on the type and number of criteria the project satisfies. The type and quantum of exemption to be considered, under both the incentives, are as follows:

i) Tax Exemption Under Section 127, Income Tax Act 1967

The income of companies undertaking ASP is exempted at statutory level. The

quantum of tax exemption on statutory income varies between 70 percent and 100 percent for a period of 5 to 10 years from the date of generation of income. The quantum of exemption available are as follows:

(a) companies undertaking ASP will be granted partial exemption of income tax on 70 percent of the statutory income for 5 years. The balance 30 percent of that statutory income will be taxed at the prevailing company tax rate;

(b) companies undertaking ASP in Sabah, Sarawak and the designated eastern corridor of Peninsular Malaysia will be granted partial exemption of income tax on 85 percent of the statutory income for 5 years. The balance 15 percent of that statutory income will be taxed at the prevailing company tax rate;

(c) companies undertaking ASP of national and strategic importance will be granted full exemption of statutory income from payment of income tax for 10 years.

Dividends paid out of tax-exempt income to shareholders will also be exempted from tax. Capital allowances as well as losses unabsorbed have to be utilised during the exemption period and will not be allowed to be carried forward to the post exemption period, while losses unabsorbed during the exemption period will also not be allowed to be carried forward to the post exemption period.

Application forms (BAC 1/96) for tax exemption under Section 127 of the Income Tax Act 1967 can be obtained from the Tax Analysis Division, Ministry of Finance, Kuala Lumpur.

ii) Investment Allowance (IA) Under Schedule 7B Income Tax Act 1967

Under IA, the quantum of allowance available to companies undertaking ASP in respect of qualifying capital expenditure incurred within 5 years from the date the qualifying capital expenditure is first incurred varies between 60 percent to 100 percent and the allowance can be utilised to set off against 70 percent to 100 percent of the statutory income. The quantum of allowance available are as follows:

(a) companies undertaking ASP will be granted IA of 60 percent in respect of qualifying capital expenditure incurred within 5 years from the date the capital expenditure is first incurred. The allowance can be utilised to set off against 70 percent of the statutory income;

(b) companies undertaking ASP in Sabah, Sarawak and the designated eastern corridor of Peninsular Malaysia will be granted IA of 80 percent in respect of qualifying capital expenditure incurred within 5 years from the date the capital expenditure is first incurred. The allowance can be utilised to set off against 85 percent of the statutory income;

(c) companies undertaking ASP of national and strategic importance will be granted IA of 100 percent in respect of qualifying capital expenditure incurred within 5 years from the date the capital expenditure is first incurred. The allowance can be utilised to set off against 100 percent of the statutory income.

Dividends paid out of tax-exempt income to shareholders will also be exempted. Any unutilised allowance can be carried to the subsequent years until it is fully utilised.

Application forms (BAC 1/96) for IA under Schedule 7B of the Income Tax Act 1967 can be obtained from the Tax Analysis Division, Ministry of Finance, Kuala Lumpur.

Companies undertaking ASP which are granted income tax exemption under Section 127 or IA under Schedule 7B of the Income Tax Act 1967 can also benefit from additional tax incentives, which are as follows:

i) Industrial Building Allowance
Industrial Building Allowance (IBA) is granted to companies incurring capital expenditure on construction or purchase of a

The main tax incentives proposed for ASP are either income tax exemption under Section 127 or Investment Allowance (IA) under Schedule 7B of the Income Tax Act 1967

The Government has identified certain sub-sectors viz transportation, communications and utilities within the services sector which are currently prominent and are of emerging importance

Dividends paid out of tax-exempt income to shareholders will also be exempted from tax

Companies undertaking ASP which are granted income tax exemption under Section 127 or IA under Schedule 7B of the Income Tax Act 1967 can also benefit from additional tax incentives

building which is used for the purpose of operation of the service. In this regard, companies undertaking ASP are eligible for an initial allowance of 10% and an annual allowance of 2% .

Claims for IBA should be made in the annual income tax return forms to the Department of Inland Revenue.

ii) Duty Exemption On Machinery & Materials

Exemption is given on import duties and sales tax on materials and machinery which are directly used in the implementation of ASP and also for purposes of training and R& D and which are not available locally. In addition, materials and machinery which are locally purchased are given sales tax & excise duty exemption.

Application forms (BAC 2/96) for duty exemption on machinery & materials can be obtained from the Tax Analysis Division, Ministry of Finance, Kuala Lumpur.

Apart from the above tax incentives available to ASP, a number of other tax incentives are provided to the entire services sector, which are as follows:

i) Double Deduction On Promotion Of Export of Services

The incentive on double deduction on expenses incurred pertaining to promotion of export of services, which is currently available to the tourism subsector, is extended to the entire services sector. The expenses eligible for double deduction are as follows:

- export market research;
- preparation of tenders for the supply of services overseas;
- supply of technical information abroad;
- fares in respect of travel overseas by employees of companies for business;
- accommodation and sustenance expenses incurred by Malaysian businessmen going overseas for business, subject to RM200 per day for lodging and RM100 per day for food;
- cost of maintaining office overseas for purpose of promotion of services.

Double deduction on promotion of export of services for companies eligible for tax incentives under Section 127 or Schedule 7B of the Income Tax Act 1967, is allowed to be accumulated and offset against their post exemption income.

Application forms (JHDN/DD 1/96) for double deduction on expenses incurred pertaining to promotion of export of services can be obtained from the Technical Division of the Department of Inland Revenue, Kuala Lumpur.

ii) Double Deduction For Research & Development

Companies in the services sector are eligible for double deduction incentives for undertaking R&D activities. For this purpose, R&D is defined as folows:

"Research and development means any systematic or intensive study undertaken in the field of science or technology with the object of using the results of the study for the production or improvement of materials, devices, products, produce or processes but does not include:

(i) quality control of products or routine testing of materials, devices, products or produce;

(ii) research in the social sciences or the humanities;

(iii) routine data collection;

(iv) efficiency surveys or management studies; and

(v) market research or sales promotion. "

The expenses allowed as double deduction are as follows:

(a) expenditure not being capital in nature, incurred on research and development approved by the Minister of Finance under Section 34A of the Income Tax Act 1967;

(b) payment for use of services of approved research institutions*, research and development company** and a contract research and development company** under Section 34B of the Income Tax Act 1967;

(c) cash contributions made to approved research institutions under Section 34B of the Income Tax Act 1967;

Application forms for (a) (MIDA R&D 3)can be obtained from the Malaysian Industrial Development Authority (MIDA), Wisma Damansara, Kuala Lumpur. As for incentives (b) and (c), the companies should make a claim in the annual income tax return and submit as evidence the invoices and receipts issued by the respective institution/company.

Note:

* Approved research institution includes the following:

(a) all government research institutions, including institutions corporatised under Section 24 of the Companies Act 1965;

(b) government funded university which undertake research that conform to the definition of R&D as indicated above.

** R&D company or contract R&D company refer to companies which are established in conformity with Section 2 of the Promotion Of Investment Act 1986.

iii) Double Deduction on Training

Companies under the services sector not covered by the Human Resources Development Fund (HRDF) are eligible for doubled deductions on training expenses if such training were to be undertaken in an approved training institution or any government training institution. In order to qualify as an approved training institution, it must be an association based institute.

For the purpose of enjoying the incentives, the companies should make a claim in the annual income tax return and submit as evidence the invoices and receipts issued by the approved training institution or the government training institution.

All enquiries on tax incentives pertaining to the services sector should be made to the Ministry of Finance at the following address:

Secretary General
Ministry of Finance
Tax Analysis Division
10th Floor, Block 9
Jalan Duta
50592 Kuala Lumpur.
Tel: 03-2582000
Fax: 03-2548632

Companies under the services sector not covered by the Human Resources Development Fund (HRDF) are eligible for double deductions on training expenses

What is the Meaning of MANUFACTURE?

The meaning of the word "manufactured" has not been defined in the Act, reference has to be made to other sources to determine its precise scope.

1. Black's Law Dictionary

Black's Law Dictionary, first published in the United States in 1891 and now in its 6th Edition, defines it as follows:

"**Manufacture**, v. Front Latin words manus and factura, literally, put together by hand. Now it means the process of making products by hand, machinery, or other automated means. Meaning of word "manufacture," which is defined as the making of goods or wares by manual labor or by machinery, especially on a large scale, has expanded as workmanship and art have advanced, so that now nearly all artificial products of human industry, nearly all such materials as have acquired changed conditions or new and specific combinations, whether from the direct action of the human hand, from chemical processes devised and directed by human skills, or by the employment of machinery, are commonly designated as "manufactured."

Manufacture, n. The process or operation of making goods or any material produced by hand, by machinery or by other agency; anything made from raw materials by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labor or machine.

In patent law, any useful product made directly by human labor, or by the aid of machinery directed and controlled by human power, and either from raw materials, or from materials worked up into a new form. Also the process by materials worked up into a new form. Also the process by materials worked up into a new form. Also, the process by which such products are made or fashioned."

2. PP v. Tan Kim Lim

The term also presented itself for definition before Syed Othman J (as he then was) in PP v Tan Kim Lim (1975). That case turned on the meaning of "manufacture" for the purpose of section 16(l) of the Excise Act, 1961 and his Lordship had this to say;

> "The Shorter English Oxford Dictionary gives the meaning of "manufacture" as the making of articles by physical labour or machinery, especially on large scale.
>
> To determine what is intended by the word in section 16(1) of the Excise Act, I need only cite here three of the authorities which were discussed by the learned president on the arguments from both sides. These authorities, also cited before me are from India, America and England.

3. C of ST v. Dr. Sukh Deo

In **Commissioner of Salt Tax v. Dr. Sukh Meo (1969)** the court said:

'.... The expression 'manufacture' has in ordinary acceptance a wide connotation: it means making of articles or materials commercially different from the basic components, by physical labour or mechanical process ...'

4. Law Lexicon

The Law Lexicon of British India by P. Ramanantha Iyer quoted a passage from an American judgment which reads as follows:

'... Manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinct name, character or use.'

What is the meaning of MANUFACTURE?

5. Prestcold (Central) Ltd.

In Prestcold (Central) Ltd. v. Minister of Labour [1969] Lord Denning said:-

'.... It seems to me that when a person makes a machine, by getting component parts from elsewhere and assembling them together himself, he can properly be said to be manufacturing that machine.'

Considering the authorities, the word manufacture' appears to me to mean in its general sense the making by labour or machine of an object or various objects into another object of a different character. Thus if a slab of granite is carved into a grindstones, a piece of wood is made into a piece of furniture, or a lump of earth into a brick, it is manufacture."

6. ACR Trading Pty. Ltd.

For a fruitful discussion on the meaning of "manufacture" we also refer to **ACR Trading Pty Ltd v Fat-Sel Pty Ltd (1987)** where Kirby P said.

"Originally 'manufacture', as its derivation suggests, meant making by hand. However, in popular parlance, the word now has a much looser meaning. Since the first Industrial Revolution, 'manufacture' has tended to mean the making of goods by machinery, especially on a large scale. So much is given as the first definition in the Macquarie Dictionary. The second definition is 'the making of anything'. The appellants relied on the sixth definition 'to work up [material] into form for use'. They urged that the separation process by which, through a series of vats and ultimately in a distillation pot, a valuable product was extracted from the grease trap composite amounted, in popular parlance to 'manufacture'. It was urged that this Court would so find.

Ultimately, the search is for what, objectively determined, it might be said the Council meant by the permission which it gave to the appellants' predecessor, Swifts. The answer to that question is not likely to be found in a consideration of the many other cases which, for taxation and other purposes, have involved courts in giving meaning to the word manufacture'.

7. Jack Zinader Pty. Ltd.

However, we were taken to **Federal Commissioner of Taxation v Jack Zinader Pty Ltd (1949)** where the High Court held that fur garments produced from pieces of fur retrieved from old worn out fur garments were 'manufactured'. Dixon J. described the process as that of producing a different article. Williams J said:

'.... The defendant is not concerned to repair or alter the old garment, it is concerned to fashion a different garment out of the serviceable pieces of the old garment or, in other words, to work up this material into a new form suitable for use. This is manufacture within the ordinary meaning of the word.'

8. MP Metals Pty Ltd

In **M P Metals Pty Ltd v Federal Commissioner of Taxation (1968)** the question before the High Court was whether a scrap metal merchant 'manufactured' a product when it cut pieces of scrap metal into specified maximum lengths and then compressed the scrap so obtained into bales of specified dimension and density. These bales were then supplied to customers for the charging of furnaces. It was held that this process did not constitute 'manufacture'. Menzies J describing the cutting operations said:

'... The operation begins with a heap of scrap with some long pieces and finishes with a heap of the same scrap but now without any long pieces.... It appears that all that has happened is the cutting of some of the scrap into shorter lengths.'

9. Utah Development Co (1976)

"Care must be taken in using earlier decisions on other statements as anything more than a judicial dictionary. Nevertheless, the foregoing decisions are of some help. They reinforce the impression, which common experience suggests, as to the relatively loose way in which the word 'manufacture' is now utilised in ordinary speech in this country. **Federal Commissioner of Taxation v Jack Zinader Pty Ltd** is particularly useful, in that it calls attention to the feature of manufacturing as involving change and conversion. Necessarily the ingredients do not disappear. They are reformed into something new. **M.P. Metals** is useful in reinforcing this concept of novelty in that which is manufactured. Merely re-presenting the same material, but in a different size or shape, may not constitute 'manufacture'".

10. Ready Mixed Concrete (WA) Pty Ltd.

In **Ready Mixed Concrete (WA) Pty Ltd. v FCT (1971)** Windeyer J considered the

What is the meaning of MANUFACTURE?

proper manner of defining the word "manufacture and said:

"... The difficulties of that word are not removed by saying that one looks at its use in ordinary parlance. In ordinary parlance a shipwright would not be called a manufacturer or ships, although a maker of motor cars is a manufacturer. All that can perhaps be said of the word is that its derivative and etymological sense no longer determines its meaning. No longer is it restricted to the handiwork of individual craftsmen. The old silversmith, no doubt, was a manufacturer of his wares: he manufactured them because he made them by hand. But today the phrases 'manufacturing plant' and 'manufactured goods' used in the Act connote, I consider, the production of goods in quantity. The question is not solved by saying that cutting up things and grinding things is not manufacturing. That is too general a proposition. A flour miller who grinds wheat is, I would have no doubt, a manufacturer. But a man who fells trees cuts them into lengths and sells firewood for use in the domestic hearth is not, I think, properly called a manufacturer of firewood. Yet on the other hand a sawmiller who converts logs to lengths and forms to be used as architraves or flooring boards does, I would think, fall within the description of a person who is engaged in a process by means of which manufactured goods are derived from other goods. The question is, in one sense, one of mixed fact and law: or it may be said that strictly it is a question of law being a question of whether or not the facts answer a statutory description. Whether fact or law, my answer is that the production of aggregates by crushing stone in a crushing plant is a manufacturing process."

11. Carflex Waste Pipe Co. Ltd.

In **Carflex Waste Pipe Co. Ltd. v. Min. of Labour (1969)** Lord Diplock expressed the view that preparation of a product for its use in another manufacturing process can itself be manufacturing. It therefore follows that for a product to be said to be manufactured it need not have been fully manufactured in the sense of being ready for use by the ultimate customer. However, we interpolate to add that the meaning of the word "manufacture" is sometimes dependent in the context in which it is used. In **McNicol & Anor v Pinch (1906)** English Finance Act of 1901 came up for consideration. Section 5 of the Act provided that certain duty shall be charged, levied and paid "on glucose made in Great Britain or Ireland", "on saccharin made in Great Britain or Ireland" and "on a licence to be taken out annually by a manufacturer of any such glucose or saccharin." It was held that the words "manufactured" and "made" in that section meant practically the same thing. That interpretation is peculiar to its facts and is not of general application. **FCT v. Jax Tyres Pty. Ltd.** which followed **McNicol's case** is also peculiar to its own facts.

From the above authorities it is clear that though the expression "manufacture" implies a change not every change is "manufacture" though every change involves labour and manipulation. A product is said to have been "manufactured" when it has, generally stated,

(i) been made from raw materials by the hand, by machinery or by art and

(ii) in the process it becomes commercially different having a distinct name, character or use from the basic component.

12. MP Metals Pty Ltd.

Useful guidance on what is meant by becoming "different" is provided by Windeyer J in **MP Metals Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia** where his Lordship said:

"... It is no doubt true that all manufacturing involves the making of a new thing. But it is not true that every making of a new thing is, in the relevant sense, manufacturing. And what is meant by a new thing? In **Federal Commissioner Of Taxation v. Jack Zinader Pty. Ltd. (1949)** (a case under the Sales Tax Acts) Dixon J. quoted a statement by Darling J. in **McNicol v. Pinch [1906]** that 'the essence of making or of manufacturing is that what is made shall be a different thing from that out of which it is made'. That is indisputable. But what is a different thing? Various paraphrases were offered to me, such as a 'substantially different thing', not merely an 'altered thing'; 'a new entity'; 'a distinct commodity'. But these are all pregnant with ambiguity. Identity and difference, as concepts, must always be related to some quality of the thing or things in respect of which identity or difference is to be determined. It may be colour, shape, chemical composition or any other quality. To speak of 'substantial differences', (as distinct from small differences), means little or nothing, unless some quality of the thing is postulated as its essential. And whether a thing is so different a

What is the meaning of MANUFACTURE?

thing from the thing or things out of which it was made as to be properly described as a new commodity may depend not only upon physical characteristics but also on differences in its utility for some purpose. This was emphasized in the argument for the taxpayer. Scrap before it was treated by shearing or baling was, it was said, not 'usable'; by such treatment it was made usable. But I do not think the inquiry is advanced by this or by speaking of a 'new entity'. If a piece of metal be cut into two, then clearly two new entities are created, neither of which is in size the same as the piece which as an entity has been destroyed. To take an illustration suggested by remarks of Scrutton L. J. in **Bailey, R.O. v. Potteries Electric Traction Co. Ltd. [1931]** a shopkeeper who slices rashers from a side of bacon with a mechanical cutter. He is creating new things. They are things which have a name of their own, rashers, and are usable in a way that the piece from which they were cut was not. It may be that only by thus creating them could he find buyers for his bacon. Still he would not ordinarily be called a manufacturer, and his goods would not be called manufactured goods. That, it may be said, is because the bacon itself was not manufactured, that the butcher who kills a pig does not manufacture pork, and the bacon curer does not manufacture bacon. But if that were the only answer, one could turn to Lord Justice Scrutton's other shopkeeper, the man who cuts off peices from a roll of calico. I mention these things not because I think analogies, whether false or true, are of any help in this case, but rather to shew that they are not."

A product assumes a distinct name, character or use from the basic component when the use to which it can be put is something which the basic component cannot be put to. A classic example as stated by Syed Othman J (as he then was) in **PP v Tan Kim Lin, supra**, is the carving of granite into a grindstone. The raw material is the granite. It has been carved by hand or machine. In the process it has been transformed into a grindstone acquiring for itself a distinct name and use. The granite from which the grindstone was made cannot perform the same function as the grindstone. In **Byrne Bros Pty Ltd v. City of Maryborough (1984)** it was held that the crushing of river gravel so that it is converted into aggregate of a size or description required by customers is a manufacturing process and falls within a by-law which requires consent to "carry on or engage in any trade or manufacture". Again the process of crushing the river gravel amounts to manufacturing as the gravel in its original form cannot be used by the customers for their purpose. In **Kent v Astley (1869)** the mining of slate from a quarry and splitting and shaping them into slates for sale was held to be a manufactured process. In **R v York Marble (1969)** the cutting and polishing of marble from rough slabs was also held to be a manufacturing process. In **Utah Development Company v FC of T (1975)** the taxpayer engaged in the mining of coal and subsequent breaking up of that coal into various parts. The coal subsequent to this processing had significantly different properties or qualities which made it suitable for the particular use for which it was sold. Newton J of the Supreme Court of Victoria found that the process by which the "new coal" was produced involved manufacture. In **Samuel McCausland Ltd. v Ministry of Commerce (1956)** rye grass seeds bought and processed by drying them and passing them through sieves and mechanical separators and sold as a refined commodity. In holding that the process amounted to the manufacture of goods Lord McDermott had this to say,

"One cannot, as it seems to me, decide this case merely by looking at the goods and giving them a physical description. One must also consider how they came to be what they are and what the company has done to the crop in order to obtain the finished product. The question is, of course, to a large extent one of degree, but coming to the best conclusion I can in the light of the consideration I have mentioned I am of the opinion that the company is, according to the natural meaning of the words 'engaged in the manufacture of goods'."

In **Commissioners of Customs and Excise v Savoy Hotel, Ltd. (1966)** hotel guests who ordered orange juice were served with the juice of an orange, unsweetened, freshly pressed to their order. It was held that the orange juice so served did not fall within the description of manufactured beverages within the meaning of Group 35(a) of Sch. 1 to Purchase Tax Act 1963. In our opinion the rationale underlying this decision is the fact that the product produced, that is to say, the orange juice, was not materially different from consuming the unpressed orange containing the juice. The juice did not acquire for itself a distinct use from the orange. At this stage we must point out that the application of the tests to determine whether a product is manufactured or not is one of fact (see **FCT v Jax Tyres, supra; MP Metals Pty Ltd v. Commissioner of Taxation of the Commonwealth of Australia, supra** and **Parker v. Great Western Railway Co (1856)**.

What is the meaning of MANUFACTURE?

High Grade Silica Sand

We shall now consider whether the high grade silica sand produced amounts to it being 'manufactured' within the meaning of section 36(1) of the Promotion of Investment Act. The appellants treat and refine high grade silica sand for exporting to Japan, Korea and Taiwan. The technology was introduced by the Japanese silica sand specialists. So far the taxpayers are the biggest producers of silica sand and produce the best grade of silica sand in the ASEAN countries. The quality of the high grade sand is also the best grade in the whole west pacific region from Japan to Australia. The silica sand is used for making high grade glassware, high grade bottles, crystal as well as chemicals. The machineries used for refining the high grade silica sand are imported from Japan, Taiwan, U.S.A., England, Australia and Singapore. For this specialized job the taxpayers have employed more than ten specialized personnels like mining engineers, chemists and geologists to carry out the refining operation.

Two processes are used for producing high grade silica sand from the raw material. In the first process, the raw material is fed by the payloader to a conveyor through a hopper. The material is then fed to a vibro separator where the dirty stuff and the coarse material is seived out and removed by the chute. The underflow is fed to a spiral classifier. In the spiral classifier, the sand is scraped and brought up by the screw action and fed to a sump. Again the silica sand is pumped to a spiral separator. In the spiral separator the impure minerals are separated and discarded through a chute. After that the silica sand is gathered into a pump and pumped out by a slurry pump to a second stage separation by another spiral separator. The final product of the high grade silica sand is gathered into a sump and pumped by a slurry pump to the stockpile through a cyclone. In the second process the raw material is fed by a payloader to a conveyor through a hopper. First, the raw material is fed to a trommel. The dirty material, wood and coarse particles etc. are rejected through a chute and the undersize material is gathered into a sump. This material is again carried by a bucket conveyor to another trommel for separation. In the trommel the silica sand is separated into coarse and fine grades. The coarse grade of silica sand is gathered into a sump and then carried up by a bucket conveyor to a stockpile through a conveyor. The fine silica sand in another stump is pumped by slurry pump to a spiral separator. In the spiral separator the impure minerals are separated and removed through a chute. The sand is again fed to a table separator. In the table separator, the impure minerals are again removed and discarded through a chute. The final product of high grade silica sand is gathered into a sump and is again transferred by a bucket conveyor to the stockpile through a series of conveyors. Part of the high grade silica sand is not fine enough. Therefore, it is fed into a ball mill for grinding into sizes required by the end users. All the silica sand from both the processes are loaded onto a truck by the payloader and piled up in the Bintulu port for transporting by ocean-going vessel to the end users in Japan, Korea and Taiwan for consumption.

i) The facts of this case are similar to that of **ACR Trading v Fat-Sel Pty Ltd., supra**. In that case thirty mobile tankers proceeded everyday to the Moorebank premises carrying grease trap waste. The contents were emptied, initially by vacuum suction, from the tankers into a tank. Thereafter, the water and fat layers were transferred to another tank where they were separated from the solids. These solids were later disposed off as soil conditioner, away from the Moorebank site. Natural separations of water and fat occurred in the tank. The waste water was then removed to another tank for disposal. The fat was processed by heat, in a series of steps in the distillation tank or pit. This heating process continued until a "saleable product of fat" was finally obtained. This product had a high commercial value for use in the manufacture of soap and cosmetics. In holding that the process through which the fat was obtained was a manufacturing process Kirby J said:

> ".... Applying these tests. and the dictionary definitions to the activities of the appellants, I have no doubt that they were engaged in "manufacturing". What went in was an offensive sludge which would otherwise be worthless and disposed of as such. What came out, following the processes involving vats and a distilling pot, was a valuable commodity used for the manufacture of soap and cosmetics. What came out was neither the same shape, composition or appearance as what went in. It was not simply represented in different proportions. By the processes involved, it became something different and this was commercially valuable. If an officious bystander, taken from Alfred Road, Moorebank, to behind the factory and shown the vats and pot; and described the steps in the process of se-

What is the meaning of MANUFACTURE?

curing the commercially valuable product had been asked 'is this a 'manufacturing' process?', I have no doubt that the answer would have been in the affirmative."

The taxpayers' evidence made it clear that there was a difference between the crude sand and the high grade silica sand after the processes it had gone through as described below.

(i) Chemical Composition

The iron content of crude silica sand is 300-400 ppm (part per million) while in the high grade silica it is 100 ppm. Before processing there is more titanium oxide in the crude sand. After processing it is reduced to 300 ppm from about 600 ppm. The silica content is also increased after the processing from 99.4% to 99.7%. Other impurities removed are zircon, rotton wood, chromium oxide and aluminium oxide. With regard to chromium oxide it is 3 - 7 ppm in the crude sand while after processing it is below 2 ppm.

(ii) Utility

Only the high grade silica sand produced by the Appellants can be used to make high grade glass, high grade bottles, crystal, sodium silicate and foundary casting. The removal of oxides from the crude sand ensures that the glass produced is colourless. The removal of zircon ensures that there are no unmelted spots in the glass. The removal of organic materials ensures that there is no loss of ignition.

Crude silica sand cannot be used for the purposes enumerated above and from a commercial point of view it cannot be marketted. It cannot be used in the construction industry as it is very fine.

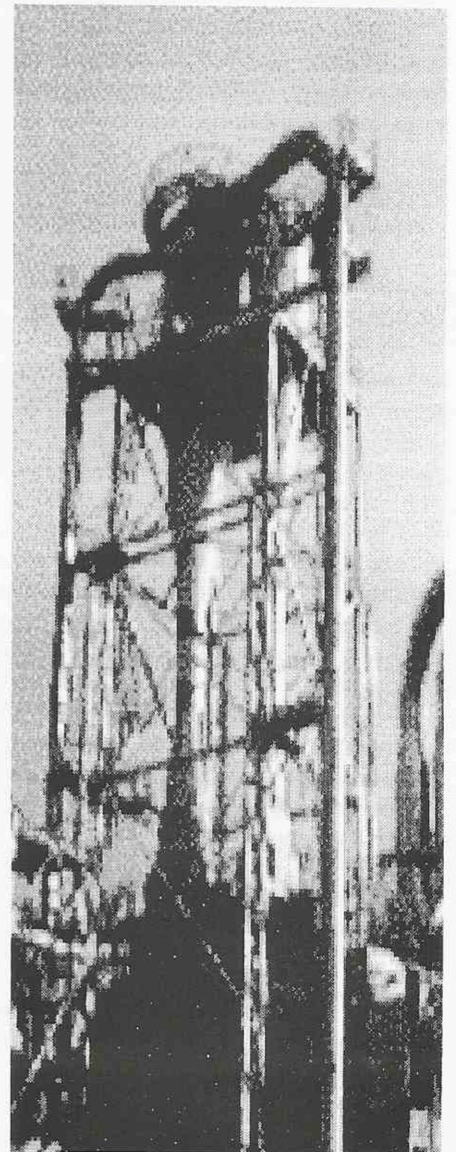
(iii) Colour

In the crude silica sand there is a light shade of brown while the processed silica sand is absolutely white.

(iv) Size

The high grade silica sand is smaller than the crude sand. The size is determined according to the needs of customers. If the size does not meet their requirements they will reject it.

Just as in the **ACR Trading case** the crude silica sand cannot be used for making high grade glass. What was finally produced was neither of the same shape, composition nor appearance as the original crude silica sand. It had undergone changes in its physical characteristics. By the processes involved the crude sand became something different and this was commercially valuable. Sophisticated technology with qualified personnel were used in processing it. The taxpayers have succeeded in establishing the value of the sand both before and after processing exercise. Their witnesses were not cross-examined on this vital issue by the Revenue. In the upshot we held that the high grade silica sand amounted to a "manufactured" product within the meaning of section 36(l) of the Act. Our view is fortified by the fact that products such as tin ingot, rubber sheets and sawn timber which otherwise for their exclusion pursuant to section 36(4) of the Act would have been "manufactured" products (see Sch 2 of the Promotion of Investment (Declaration Ordinances 36(4)) Order 1987 PU(A) 114). High grade silica sand is also on the same footing as the products that we have just mentioned. Therefore we allowed the appeal and ordered that the assessment be revised accordingly.



Memorandum to the honourable Minister of Finance

The Malaysian Institute of Accountants ("MIA") and the Malaysian Institute of Taxation ("MIT") congratulate the Minister for continuing to guide the country to economic growth in excess of 8% again in 1995. (actual real GDP growth is 9.5 % for 1995)

In spite of the reduction in individual tax rates and increase in tax reliefs, revenue collection has grown further due largely to a combination of factors such as the buoyant economy, increased efficiency in tax collection and administration.

The continued rapid economic growth in 1995 is even more commendable considering that the growth was achieved alongside a low CPI growth of only 3.4%.

Following a proctracted period of rapid economic growth of close to 9% average for eight consecutive years, it is inevitable that some by-products of this prolonged economic growth have emerged. These by-products include inflationary pressures, labour shortages and current account deficits.

Notwithstanding the above, MIA/MIT applaud the Government's effort and commitment in continuing to pursue the policy of sustainable growth, incorporating the concept of balanced development, to the year 2000 in the just released Seventh Malaysia Plan (1996 - 2000).

In concert with the Government's development strategies and programmes, MIA/MIT would like to make the following proposals for the Minister's consideration in the formulation of the 1997 Budget :

1. **Reduction of Individual Tax Rates (Appendix I)**
   To lower the top individual personal tax rate to 28% to match Singapore's in order to maintain competitiveness and to restore the proportional balance of individual tax contribution to the Federal Tax Revenue.

2. **Double Deduction for Utilisation of Domestic Contract and Professional Services (Appendix II)**
   To reduce the Current Account deficits by reducing the outflows of services payments.

3. **Exemption of Foreign Sourced Income to Individual Taxpayers (Appendix III)**
   To encourage the professional services sub-sector to be more dynamic and vibrant in exporting their services.

4. **Double Deduction for the Initial Cost of Setting Up, and Expenses Incurred In Operating Child Care Centres (Appendix IV)**
   This incentive will encourage mothers with young children to rejoin or remain in the workforce. In so doing, the dependence on foreign labour could be reduced.

5. **A Maximum Rate of 3% for Sales And Service Tax ("SST")(Appendix V)**
   A 3% SST will be more acceptable to the public and not over-burden consumers while at the same time maintaining the required level of indirect tax revenue.

6. **Reforms for Women (Appendix VI)**
   Women have contributed equally to our economic growth. We propose that it is time the tax system recognises their contributions by treating them in their own right as femme sole.

7. **Service Tax - Payment on Collection (Appendix VII)**
   To repeal Section 14(2) of the Service Tax Act 1975 to ensure that service tax becomes due and payable only upon collection.

8. **Exemption of Service Tax on Professional Services Provided to Free Zones (Appendix VIII)**
   To uphold the spirit of the Free Zones Act 1990 which grants service tax and sales tax exemptions to business located in the Free Zones.

9. **Interest for Taxes Overpaid by Taxpayers (Appendix IX)**
   For reasons of equity, interest should be paid to taxpayers for taxes overpaid.

10. **Late Payment Penalties (Appendix X)**
    The offence of late payment of income tax should not be penalised twice. The flat rate penalty currently imposed should be replaced with a penalty based on market rate of interest (e.g. BLR).

11. **Full Deductibility for Professional and Statutory Expenses (Appendix XI)**
    Professional expenses such as accounting, secretarial and audit fees for investment companies should be allowed a full deduction as these expenses are operational expenses necessarily incurred in order to carry on the business in compliance with the law.

12. **Capital Allowances Changes (Appendix XII)**
    Changes to the following capital allowances regime should be made to keep pace with changing times and improve tax administration.

    (a) **Rate of Capital Allowances**
    Rates of capital allowances should be simplified.

    (b) **Assets Costing RM1,000 and Below**
    Assets costing RM1,000 and below should be written off as revenue expenditure.

    (c) **Qualifying Expenditure for Motor Vehicles**
    Qualifying expenditure for motor vehicles not

licensed for commercial transportation of passengers and goods should be increased from RM50,000 to RM100,000.

13. Back Years Assessment and Record Keeping (Appendix XIII)

Back years assessment and record keeping should be limited to 6 years instead of 12 years as practised currently.

14. Inclusion of Accountants as "Investment Advisers" (Appendix XIV)

Accountants should be included as "investment advisers" as defined in the Securities Industry Act 1983.

15. Promotion of Training - Double Deduction (Appendix XV)

Inclusion of MIA and MIT in the list of approved training institutions so that expenses incurred in courses conducted by MIA and MIT are eligible for double deduction claims when employers send their staff to attend such courses. This will inculcate a training culture among our corporate citizens and smoothen the path to realising the goals of Vision 2020.

The importance of training in creating a knowledgeable workforce was also acknowledged in the Seventh Malaysia Plan.

16. Increase Sales Tax Turnover Limit from RM100,000 to RM500,000 (Appendix XVI)

This will ease the administrative burden and cost of both the Customs Department and small scale industries.

17. Changes to Petroleum (Income Tax) Act, 1967(Appendix XVII)

Please refer to Appendix XIII for the proposed changes to the Petroleum (Income Tax) Act, 1967 ("PITA").

Appendix I

A CASE FOR REDUCTION OF INDIVIDUAL TAX RATES

The continued growth of the Malaysian economy in 1995 (expected to grow by another 8.5% in 1996) has generated rising income and expansion in business activities. As a result, Federal Government Revenue is estimated to increase by 7.9% in 1996 (excluding 1996 tax changes).

In view of the rising revenue collection, we propose a reduction of individual tax rates to a maximum of 28% comprising of a higher non-taxable threshold and a streamlined and flatter structure as illustrated in Appendix 1(a).

The proposed changes will :

(i) compensate to a certain extent, individuals for the increased cost of living attributable to the inflationary pressures.

(ii) reduce the number of tax brackets from the existing 9 to 6 (There are only 3 tax brackets in Indonesia and 5 in Thailand). This will help to eliminate "bracket creep" brought about by rising income as a result of rising costs. Individuals are shifting gradually to a higher tax bracket despite the real level of income (i.e. their purchasing power) remaining unchanged or in some cases, deteriorated.

(iii) increase the level of non-taxable threshold to RM10,000 thereby helping to minimise the burden of lower income groups. At the same time, this proposal will relieve them of the need to submit tax returns which will in turn reduce the administrative work loads for the Inland Revenue Board ("IRB"). There is a case for further reduction of IRB's work load as after the reduction of work load as a result of lowering the tax rate from 32% to 30% last year, IRB is still under heavy pressure to clear their cases on time.

(iv) redress the imbalance the contribution made by individual income taxes to the Federal Government Revenue from Direct Taxes. The proportion of individual income taxes to total direct tax revenue has been rising from 22.6% in 1994 to an estimated 27.2% in 1996. Whereas, during the same periods, corporate income taxes contribution remained virtually unchanged from 52.4% to 52.9%.

(v) reverse "brain drain" to countries with lower individual tax especially Singapore. The competitive tax rates will encourage Malaysians currently working in Singapore to return to Malaysia.

(vi) encourage expatriates to relocate to Malaysia in view of the more competitive individual tax rates. Both (v) and (vi) above would combine to help to ease the tight skilled labour market conditions in Malaysia.

(vii) Promote Malaysia as a place for setting up Operational Headquarters Company ("OHQ") by offering competitive individual tax rates and lower relocation cost.

The proposed top rate at 28% is equal to that of Singapore (but still higher than Hong Kong's top rate of 20%) although Singapore's top rate only applies to chargeable income in excess of S$400,000 while Malaysia's top rate starts at income in excess of RM250,000. Therefore, even with the reduction in tax rate, the average rate of tax in Malaysia is still higher than that of Singapore for income in excess of RM250,000.

Further, with revenue growth keeping pace with the strong growth in the national economy, the reduction in tax rate should not result in revenue loss in view of higher earnings and the widening of the tax base with the inclusion of new taxpayers.

Historically, strong economic growth together with improved efficiency in the tax administration and tax collection procedures has generated increased revenue collection despite reduction in tax rates and provision of other tax incentives. The table below illustrates the growth in individual income tax revenue despite the reduction in the top individual tax rate :-

	1994 (%) (Estimated Actual)	1995 (% (Revised Estimated)	1996 (%) (Budget Estimate Excluding 1996 tax changes)
Descrease in Top Individual Rate	2	2	0
Increase in Individual Tax Revenue	7.5	29.1*	9.6

* The big jump of 29.1% in 1995 was due mainly to the introduction of the Schedular Tax Deduction.

PROPOSAL

To reduce the top individual tax rate from 30% to 28%.

Appendix Ia

MALAYSIAN TAX TABLE FOR INDIVIDUALS PROPOSED FOR THE YEAR OF ASSESSMENT 1997

			CURRENT		PROPOSED
	Chargeable Income RM	Rate %	Income Tax Payable RM	Rate %	Income Tax Payable RM
On the first	2,500		0	0	0
On the next	2,500	2	50	0	0
On the first	5,000		50		0
On the next	5,000	4	200	0	0
On the first	10,000		250		0
On the next	10,000	6	600	0	0
On the first	20,000		850		0
On the next	15,000	10	1,500	5	750
On the first	35,000		2,350		750
On the next	15,000	16	2,400	10	1,500
On the first	50,000		4,750		2,250
On the next	20,000	21	4,200	15	3,000
On the first	70,000		8,950		5,250
On the next	30,000	26	7,800	20	6,000
On the first	100,000		16,750		11,250
On the next	50,000	29	14,500	25	12,500
On the first	150,000		31,250		23,750
On the next	100,000	30	30,000	28	28,000
	250,000		61,250		51,750
On all income exceeding RM250,000		30		28	

Appendix II

UTILISATION OF DOMESTIC CONTRACT AND PROFESSIONAL SERVICES - DOUBLE DEDUCTION

The Current Account deficits in the Balance of Payments have been escalating over the years. The deficits are projected to reach RM17 billion in 1996. The deteriorating deficits have caused concern in many circles including international investors.

Analysis of the current account deficits reveals that the main contributing factors to the large deficits are in fact the Services Account deficits which recorded figures of RM15.9 billion, RM18.8 billion and RM21 billion (forecast) in 1994, 1995 and 1996 respectively.

The deficits in the Services Account are caused by the outflows of freight, insurance premiums for imports and exports and professional services.

Realising the above, the Government announced measures to curb the outflows by allowing double deduction for freight and imports and exports insurance if the payments are made to Malaysian incorporated companies.

To help stem the outflow of professional services payments, MIA/MIT propose that double deduction be extended to payments for contract and professional services to Malaysian companies at least 51% owned and controlled by Malaysian. To be eligible for the double deduction, the majority ownership and control must be reflected at both the shareholder and board levels.

Similar to "Buy Malaysian Products" and Minimum Local Contents" policies, the double deduction incentive will encourage the utilisation of Malaysian contract and professional services. As such, the deficits in the Services Account will be reduced accordingly.

PROPOSAL

To allow double deduction for payments of contract and professional services to Malaysian owned and controlled companies.

Appendix III

EXTENSION OF FOREIGN SOURCED INCOME EXEMPTION TO INDIVIDUAL TAXPAYERS

Currently, foreign-sourced income of corporate taxpayers are exempt from tax when remitted to Malaysia. This exemption was part of a package of measures aimed at promoting and encouraging outward investment by Malaysian companies to generate higher foreign revenue. The benefits of higher foreign revenue would be the improvement to the Current Account Balance.

However, the above income exemption is not applicable to individual. MIA/MIT propose that the foreign-sourced income exemption be extended to individual taxpayers including the professionals who are not allowed to incorporate their practices overseas and therefore miss out on the incentive of tax exemption.

MIA/MIT believe that the extension of this attractive and powerful tax exemption incentive to the professional individual taxpayers will spur the professional services sub-sector into becoming more vibrant, dynamic and proactive. The professional taxpayers will respond positively to the exemption incentive by actively exploring and pursuing any opportunities to export their services.

PROPOSAL

To extend the tax exemption of foreign-sourced income to individual taxpayers.

Appendix IV

COST OF ESTABLISHING AND OPERATING CHILD CARE CENTRES - DOUBLE DEDUCTION

Owing to the rapid economic growth, the economy is experiencing a shortage of labour in most sectors due primarily to the labour force growth rate lagging behind the employment growth rate.

The demand of labour by industries is being met by importation of foreign labour in great numbers. This influx of foreign labour has created great strains on the existing health care, housing, educational and other facilities and services.

The reliance on foreign labour could be reduced by increasing local labour participation rate which currently stood at a low 66.7% due mainly to the low female participation in the labour market (46.8% in 1995 compared to 53% in Singapore and 73.8% in Thailand).

An effective measure to achieve a higher female participation rate in the workforce would be the provision of employers' subsidised child care centres in the workplace. Such centres would entice some mothers with young children to rejoin the workforce as well as encouraging some of them to remain in the workforce.

The provision of subsidised child care centres by employers is actively practised in developed countries such as Australia.

To encourage employers to provide subsidised child care facilities in the workplace, MIA/MIT propose that:

PROPOSALS

- Double deduction be given to employers for the initial cost of setting up and expenses incurred in operating child care centres in the workplace.
- Employees who utilised the subsidised child care services should not be regarded as in receipt of benefits-in-kind and subject to tax.
- Capital allowances be given to the qualifying capital expenditure incurred on plant and machinery used in operating the child care centres.

Q U O T E

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

Coleman Cox

Appendix V

A MAXIMUM RATE OF 3% FOR SALES AND SERVICE TAX (SST)

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 multi-stage basis, it would also impose efficiency in indirect tax collection. In addition, as SST is a tax on consumption, it will encourage savings and rnay, at the same time, check unnecessary or compulsive consumption. This will help curb inflation and improve the Current Account balance.

It is proposed that the rate of SST should not be more than 3%. A 3% SST will be more acceptable to the public and not over-burden consumers whilst at the same time maintaining the required level of indirect tax revenue.

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

Goods and services exported should be zero rated to promote Malaysia as a trading nation.

Further, other taxes such as Customs and Excise Duties should be abolished to achieve harrnonisation of indirect taxes.

PROPOSAL

The rate of SST, when introduced, should not be more than 3%.

Appendix VI

REFORMS FOR WOMEN

Deductions For Working Mothers

Women in Malaysia enjoy equal opportunities to education and training at all levels. As a result of this policy, more and more women are joining the labour force and contributing to the development of the nation. The participation of women is indeed no longer restricted to traditional "caring" professions but encompass the whole spectrum of occupations vital for the economy. However, it is a known fact that women cannot completely abandon their maternal duties and are often prevented from joining the work force because of them. In less severe cases, women are forced to accept jobs which demand less of their time and allow them to devote some of their time to their families. Needless to say, this represents a serious loss of human capital which the nation as it moves towards 2020 can ill-afford. As it is, the nation is already feeling the strain of the tight labour situation experienced in the country currently.

We propose changes to the income tax system which would reduce the cost to women of taking up a full-time job. In the marginal situation, this would encourage women who would otherwise stay at home to care for their children to join the nation's work force and thus maximise the utilisation of labour resources in the country. We would advocate the following reliefs against the income of the female taxpayer:

- Deduction for payments for the services of a maid employed to care for a child - children .
- Deduction for payments to day care centres, nurseries etc. where the child / children are cared for.
- Alternatively, an enhanced child relief given to working women could be integrated into the existing child relief to cover child-care expenditure. Such enhanced child relief has been adopted in Singapore with much success in encouraging married women to work. Such enhanced child relief could be in the form of fixed amounts for each child.

Separate Tax Forms For Married Women

At present, the tax system requires married female taxpayers to report their income in the Tax Return Forms of their husbands. This does not respect the confidentiality of matters and privacy of the married women within a marriage and the femme sole status of women in society. We suggest that the tax administration system be amended to allow married female taxpayers to be issued with their own tax return forms (but not separate files) to afford consideration to women especially in the light of their increasing participation and contribution towards the development of the country.

Spouse Relief

At present, female taxpayers whose husbands are not deriving income in the fiscal year cannot claim relief for their spouses unlike the spouse relief given to men for their wives under Section 47 of the Income Tax Act 1967. To preserve equality and fairness and in consideration of the changing values of society, we would sugest a symmetrical relief for non-working spouses of female taxpayers.

PROPOSALS

1. To allow deduction to women for payment to maid for child care services; or
2. To allow deduction to women for payment to child care centres; or
3. To increase child relief.
4. To issue separate tax return form to married woman.
5. To allow female taxpayer to claim spouse relief for non-working spouse.

Appendix VII

SERVICE TAX - PAYMENT ON COLLECTION

Prior to the amendment to Section 14 of the Service Tax Act 1975, effective 20 July 1995, invoices issued by professional services establishments were still liable for the 5% Service Tax on collection.

The enactment of Section 14(2) modified the collection basis to a partial collection basis with a time limit of six months. This means that service tax is payable on invoices issued after six months even though payments have not been received.

Concerned about the adverse impact on the cash flows with the introduction of the above measure, MIA/MIT took their case to the Ministry of Finance. The Ministry saw the merits of MIA/MIT arguments and agreed to extend the time limit from six months to twelve months.

MIA/MIT wishes to express its sincere and heartfelt gratitude to the Ministry for its understanding of the predicament of the profession. We trust that the Ministry will offset the overpayment against our service tax liability to assist our cash flow.

While the extension from six to twelve months brought a six months breathing space for the affected professionals, the abovementioned cash flow problems will be there though on a reduced level.

In most professional services establishments, especially firms of accountants and auditors, the credit period taken by clients could be as long as one full financial cycle ranging from twelve to eighteen months.

It is not uncommon for clients to pay the previous year fee before the commencement of the current year audit. Naturally, some fees remained unpaid and had to be written off as bad.

For the above reasons, we respectfully appeal to the Minister's sense of goodwill and understanding to repeal Section 14(2) of the Service Tax Act 1975 so that service tax becomes due and payable only upon receipt of payment.

PROPOSAL

To repeal Section 14(2) of the Service Tax Act 1975 to render service tax due and payable upon collection.

Appendix VIII

SERVICE TAX EXEMPTION ON PROFESSIONAL SERVICES PROVIDED TO FREE ZONES

There has been a change in the interpretation of "export of services" by the Service Tax Office (STO) of the Royal Customs and Excise Department.

When service tax was first extended to prescribed professional establishments with effect from 1 January 1983, discussions and dialogues with senior official of the STO indicate that whether or not services provided by companies located in Malaysia to companies located outside Malaysia (i.e., Free Zones and overseas) are subject to service tax depends on the location where the services are ultimately "consumed". Thus, services provided by prescribed professional establishments to overseas clients (and therefore not "consumed" in Malaysia) are not subject to service tax. Accordingly, invoices issued to companies operating in the Free Zones and overseas have not been subject to 5% service tax.

However, "export of services" has been interpreted differently in recent months whereby only services provided to overseas clients for enquiries originated from overseas and for work physically carried out in Free Zone are not subject to service tax.

A Free Zone is defined under the Free Zone Act 1990 to mean any part of Malaysia declared as either a free commercial zone or a free industrial zone. Under Section 2 of the Free Zone Act 1990, any goods and services except for those prohibited by law, brought into, taken out, produced or provided in free zones will be exempted from any customs duty, excise duty, sales tax or service tax.

Accordingly, any prescribed services provided to customers in a Free Zone by either a prescribed professional establishment or a prescribed establishment should be exempted from service tax.

The provision of prescribed services of a public accountant normally culminates in the preparation and submission of a document by the public accountant to the recipient of services, the client. For instance, in the case of auditing services, the document provided will be the audited annual accounts which incorporate the auditor's report while in the case of a tax compliance, tax consultancy or management consultancy assignment, the document provided to the client would generally be in the form of a report highlighting the findings and recommendations of the subject matter. Much of this work is carried out outside the Free Zone.

In the light of the above, it should be viewed that the prescribed services of the public accountant would be deemed to have been provided to the client where the documents are received by the client. Thus, where the client is located in a Free Zone, the prescribed services of the public accountant should be deemed to have been provided in the Free Zone where the documents are provided to the client.

Notwithstanding the above, the location where the services are physically performed should not be used as the determining factor in exempting service tax in the Free Zone.

Instead, the concept of "rendering of services" as in exports, which are zero-rated in consumption tax regimes, should be adopted to determine the applicability of service tax on professional services provided to clients located in the Free Zone.

PROPOSAL

To exempt from service tax professional services provided to clients located in the Free Zones.

Appendix IX

PAYMENT OF INTEREST FOR TAX OVERPAID BY TAXPAYERS

Under the Income Tax Act 1967, tax is due and payable on the issue of the notice of assessment. If tax is not paid within thirty (30) days of the notice of assessment, a penalty of 10% is imposed on the unpaid amount. A further penalty of 5% is imposed if the tax remains unpaid after sixty (60) days. Over and above the 15% penalty (10% + 5%), companies and taxpayers with business income are required to pay tax by bimonthly instalments, prior to the issue of the notices of assessment. A penalty of 10% is imposed on the bimonthly instalments if tax is not paid in time i.e. within thirty (30) days. The aggregate penalty on late payment of tax could amount to 25% of the tax. Whilst these provisions will encourage taxpayers to pay their tax on time, there are unfortunately no provisions to compensate taxpayers who pay their tax which is under dispute.

It is proposed that where a taxpayer pays his tax which is under dispute to the IRB and the assessment is finally amended in taxpayer's favour, interest based on Base Lending Rate ("BLR") should be paid to the taxpayer calculated from the date when the tax was paid. If interest is paid it will encourage taxpayers to pay their tax which is under dispute and this will also reduce the amount of arrears of tax which remains unpaid every year. This proposal, if accepted, will also help to reduce the amount of standover tax which has been the subject of the Auditor General's adverse comments for a number of years. The payment of interest is justified as the IRB has been corporatised and with its management becoming more efficient with greater computerisation of its various functions, the calculation of and payment of interest should not pose a problem.

The proposal to pay interest should also apply to repayment cases. Repayment cases represent tax which has already been paid/deducted at source by companies declaring the dividends and when return forms are submitted by the recipients of the dividends to claim refund from the IRB. At the moment, there is considerable delay in processing the repayment claim made by taxpayer. It is proposed that interest be calculated on the amount of refund due from the twelve month after the submission of the tax returns.

PROPOSALS

- To pay compensatory interest based on BLR on tax overpaid by taxpayers.
- To pay compensatory interest based on BLR on repayment cases.

Appendix X

LATE PAYMENT PENALTIES

(i) Penalties Imposed Under Section 103 and 107B of the Income Tax Act 1967

Taxpayers who settled their taxes after the due dates could be penalised twice, for the same offence of late payment of income taxes, under Sections 103 and 107B.

Section 103 applies when payment of tax is not made within 30 days after the service of the notice of assessment.

Section 107B applies when instalment payment of tax is not made within 30 days of the due date, as specified by the Director General on the Notice of Instalment Payment commonly referred to as Form CP 38SA.

Although the above penalties are prescribed under two separate Sections of the Income Tax Act 1967, the nature of the offence relates to the late payment of income taxes and therefore should be treated as similar.

As such, it is unjust for a same offence to be penalised twice.

PROPOSAL

To amend Sections 103/107B of the Income Tax Act 1967 to eliminate double penalties on the same offence.

(ii) Rates of Penalties

The current rate of penalty for late payment of income tax is a flat 10% + 5% of the amount outstanding.

The imposition of flat rate penalty is out of steps with prevalent commercial practices which only charged penalty interest based on market rates for late or non-payment. Countries like Australia and New Zealand have adopted penalty regimes based on market rates.

PROPOSAL

To replace flat rate penalty for late payment of income taxes with penalty interest based on current market rates, or similar to what is adopted by the Customs and Excise Department.

Appendix XI

FULL DEDUCTIBILITY FOR PROFESSIONAL AND STATUTORY EXPENSES

At the moment, the IRB regards professional expenses such as accounting, secretarial, audit fees and taxation for investment holding companies as "permitted expenses" and partially allows them in the tax computations. MIA/MIT are of the opinion that the present legislation and basis for allowing the expenses may be unjust to investment companies and to some extent, organisations performing the services for such companies.

The Companies Act 1965 requires that proper books of accounts be kept, that limited liability companies engage a company secretary and that the books and accounts be audited by an approved company auditor. These requirements are mandatory and therefore they are necessarily incurred by the business albeit for investment purposes only. These expenses are operational expenses necessarily incurred in order to carry on the business in accordance with the law.

It is unjust because the investment company is disallowed a substantial portion of these expenses which the law caused to be incurred and which have to be incurred if order and credibility are to be expected of the accounts and statutory books and other records of a properly incorporated company governed by the law. We are of the view that the statutory expenses such as these should be allowed in full.

It is also not fair for professional firms, particularly accountancy practices, as their clients may resist the payment of a decent fee for professional services due to partial deduction only of such fee for reasons beyond their control. This factor will affect professionalism.

PROPOSAL

To allow full deduction for the following professional expenses of investment holding companies :-

- Accounting
- Audit
- Taxation
- Secretarial
- Annual General Meeting
- Annual Report Printing
- Share Registration

Appendix XII

CAPITAL ALLOWANCES

(i) Simplifying The Rates Of Capital Allowances

The rates of annual allowances on qualifying plant and machinery are prescribed under the Income Tax (Qualifying Plant Annual Allowances) Rules 1968. The current rates as provided in the Rules range from 6, 8, 10, 12, 14, 16 to 20 percent, depending on the type of asset and the nature of the industry. In order to simplify the calculation of capital allowances and prepare for the introduction of self-assessment, it is proposed to reduce the classification of assets into three main categories with the following applicable rates for all industries :-

Asset	Rate (%)
Office equipment, furniture and fittings	10
Plant and machinery (general)	12
Heavy equipment, motor vehicles	20

Notwithstanding the above, the special rates for computers, related software, information technology and environmental protection equipment should remain. Alternatively, the annual rates should follow that used for accounting purposes, as in New Zealand, to avoid having two set of rates.

PROPOSAL

(a) To simplify rates of annual allowances to 10, 12 and 20%; or
(b) To follow the rates for accounting purposes.

(ii) Expensing Of Assets Costing RM 1,000 And Below

Currently, all assets, irrespective of the costs, are disallowed as revenue deductions and capital allowances are given annually based on the rates applicable to the respective assets. It is rather onerous and tedious for tax purposes to capitalise and maintain records and reconciliations of all items of assets which can be numerous and voluminous. In order to ease the burden of record keeping and to facilitate the calculation of capital allowances with a view to the introduction of self assessment, it is proposed that assets costing a certain amount say RM1,000 and below should be allowed to be written off immediately as practised in some countries such as Australia and New Zealand. The expensing of qualifying capital items costing RM1,000 and below will not involve in any overall leakage of revenue to the Government as it is merely a timing difference in the granting of the allowances. This would, however, save much time and cost to the businessmen in record keeping and in the preparation of the capital allowances schedule.

PROPOSAL

To write off assets costing RM1,000 and below.

(iii) Increase Of Qualifying Expenditure For Motor Vehicles

The qualifying expenditure in respect of a motor vehicle not licensed or permitted for commercial transportation of goods or passengers is currently limited to a maximum of RM50,000. This limit is effective from the Year of Assessment 1991, when the price of a 1.6 litre to 2.0 litre car could be purchased at around RM50,000 to RM60,000. However, the price of a similar car today has increased substantially and is above RM100,000 (e.g. the price of a Proton Perdana is about RM95,000 now). This price is expected to increase further due to the increased cost of production and the appreciation in the Japanese yen, the Deuthschmark and the Swedish Kroner. In view of this, the maximum qualifying expenditure should be revised to a more realistic figure.

PROPOSAL

To increase qualifying expenditure for motor vehicles from RM50,000 to RM100,000.

Appendix XIII

BACK YEARS ASSESSMENTS AND RECORD KEEPING LIMITED TO SIX (6) YEARS

Currently, under Section 91 of the Income Tax Act 1967, back years assessments could be raised up to twelve (12) years. Officers of the IRB frequently request for information up to twelve years. It is proposed that back years assessments be restricted to within six years from the year of assessment as:-

(i) Many of the functions undertaken by the IRB have already been computerised and the overall efficiency has been increased. The computerisation and greater efficiency should enable the IRB to detect any assessment or additional assessment not raised within six years. Also, it would reduce the amount of arrears of work as all assessments and additional assessments must be raised within six years from the year of assessment.

(ii) Under the Companies Act 1965, companies are required to keep their records for seven (7) years. If information is sought by IRB officers for more than the past seven years it would be difficult and at times impossible for companies to retrieve or furnish the information. A lot of storage space is needed for companies to keep their records and it is uneconomical and not cost effective for companies to keep their records up to twelve years. Companies are penalised unnecessarily if they are unable to furnish the information requested.

(iii) Singapore has also amended their tax law in 1995 to restrict the issue of past assessments up to the last six years. The six years limit also applies in Australia. We feel that the proposal is justifiable as under the Malaysian Income Tax Act 1967, claims for repayments or requests for amendment of assessments because of error or mistake are only allowed for the past six years.

(iv) In the current climate of high staff turnover, finding the same person who handled and know about transactions and records more than six years ago will be very highly unlikely.

(v) The IRB has stepped up its field audit activities and therefore does not need to go back twelve years.

(vi) The Service Tax audits are also restricted to six years.

PROPOSAL

To limit back years assessment and record keeping to six years, as practised in 1947.

Appendix XIV

INCLUSION OF ACCOUNTANTS AS "INVESTMENT ADVISERS"

Section 2(1) of the Securities Industry Act 1983 defines an "investment adviser" as a person who carries on a business of advising others concerning securities, or issues or promulgates analyses or reports concerning securities, as part of a regular business.

It should be appreciated that accountants have extensive knowledge and experience in the profitability and compatibility of a wide range of businesses, operating in a diversity of financial environment. Increasingly, advice and services that an accountant provide include investigations and reporting on the entities to be acquired; share valuation; feasibility and viability of mergers and acquisitions including the tax angle and other financial advice that is vital to the proposed transaction. Other specialist services include funding advice on capital restructuring and gearing of a company; assistance in sourcing for borrowings or equity capital; financial planning and modeling; and corporate planning.

In the light of the above, it can be seen that an accountant is well placed to be included within the definition of "investment adviser" pursuant to Section 2(1) of the Securities Industry Act 1983.

PROPOSAL

Accountants should be included as "investment advisers" under Section 2(1) of the Securities Industry Act 1983.

Appendix XV

PROMOTION OF TRAINING - DOUBLE TAXATION

The double deduction incentive for training was made with effect from the year of assessment 1992. The criteria for the granting of double deduction 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 institutions currently include :-

(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) Centre for Instructor and Advanced Skill Training
(vii) Penang Skills Development Centre
(viii) Institut Kemahiran MARA
(ix) Institute Technology Industry
(x) German Malaysian Institute
(xi) Malaysian Institute of Training Development

The MIA and its sponsored organisation, MIT 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 MIA 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 its sponsored body, the MIT, whose Council includes nominated members from the MIA.

Proven Capabilities in Training
Since 1987, the MIA has organised a large number of 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 in October in Kuala Lumpur. Some 2,000 participants are expected at this Conference.

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

MIA/MIT courses are therefore not only of benefit to its some 10,000 members, they are also useful to support staff such as clerks, assistant accountants and accounting technicians.

Financial Support to Training Capability
The MIA, even though it is a statutory body, does not have financial support from the government. It is dependent on members' subscriptions to operate. Unlike medicine which was regulated by the Health Ministry, engineering, the Ministry of Works, and law, the Ministry of Justice, the regulation of accountancy profession rests solely with the MIA. Regulation will entail education and training both pre-and post-graduates levels. With 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 the operation based on members' subscriptions. Allowing employers who send participants to attend 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 from 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 losses.

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 MIA and MIT 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 among our corporate citizens and smoothen the path to realising the goals of Vision 2020.

PROPOSAL

To include MIA and MIT as approved training institutions.

Appendix XVI

INDIRECT SALES TAX TURNOVER EXEMPTION LIMIT FROM RM100,000 TO RM500,000

The Government in recognising the efforts made by the small scale industries in contributing to economic growth, has introduced various measures to boost small scale industries.

In line with that, it is proposed that the exemption limit of turnover for sales tax be increased across the board from the present limit of RM100,000 to RM500,000. This will reduce the administrative cost and burden of the small industries, as well as the Customs Department.

PROPOSAL

To increase sales tax turnover exemption threshold from RM100,000 to RM500,000

Appendix XVII

CHANGES TO PETROLEUM (INCOME TAX) ACT, 1967 ("PITA")

1. **Further Reduction of the PITA Tax Rate**
While the reduction in the PITA rates from 45% to 40% in the 1994 Budget Speech was an encouraging move by the Government to sustain and enhance the role of the upstream petroleum sector in the Malaysian economy, harmonising the PITA tax rate of 40% with the general corporate tax rate (30%) is the next logical step to encourage continued investment in the upstream petroleum sector to spur productivity and stimulate growth in ongoing exploration and development activities. The alignment of the PITA rate with the general corporate tax rate would benefit the economics of marginal oil and gas projects and exploration activities.

2. **Deduction for Prospecting Expenditure**
Under the Income Tax Act 1967, qualifying prospecting expenditure incurred wholly and exclusively in searching for, discovering or winning access to deposits of minerals is deductible from aggregate income as and when it is expended. If the prospecting does not abort and the mine commences production, the whole of the expenditure will be added back to income and normal mining allowances will be given.

In comparison, qualifying exploration expenditure for prospecting under PITA is capitalised and an exploration allowance is claimed over the unit-of-production method of amortisation.

It is proposed that similar to the Income Tax Act 1967, PITA should allow prospecting exploration expenditure for each field to be deducted against the aggregate income. Should the field commence to produce, then the expenditure for the field will be added back and normal exploration allowances given using the amortisation method.

3. **Tax Deduction on Abandonment Cess**
Under the current Production Sharing Contract (PSC) terms, PSC contractors are obligated to contribute to an abandonment cess fund which is used for the removal of the offshore installations when production ceases. The restoration of the offshore site is to protect the environment and to perpetuate marine ecology.

We propose that the abandonment cess fund maintained by PETRONAS be approved as a tax exempt fund and that contributions automatically qualify for tax deduction.

4. **Removal of Ring-Fencing Rules**
Under the PITA, each PSC is ring-fenced as a separate tax entity unless the PSCs are contiguous to each other. The primary adverse effect of ring-fencing each PSC area from one another is to prevent group relief among the PSCs, thus discouraging investments beyond the minimum level required by the PSC terms.

In contrast, under the general Income Tax Act 1967, a company undertaking mining operations in different areas is taxed as a single corporate entity notwithstanding that it is operating as a partnership in some areas.

Removal of the ring fencing rules on each PSC coupled with the introduction of tax rules to tax each PSC contractor on its total upstream activities would not only provide further encouragement to undertake exploration activities but also ease the tax compliance efforts of both the IRB and PSC contractor since only one tax return would be required instead of several (one for each PSC).

5. **Amendments to the National Land Code**
The recent amendments to the National Land Code require a foreign company to seek the State Authority's approval and pay a levy of RM100,000 (non-tax deductible) for any dealing with respect to alienated land other than industrial land. This will thus encompass both acquisitions by outright purchase and long leases of land. Foreign company, under the amendments, is defined to include a company incorporated in Malaysia with 30% or more of its voting shares held by foreigners. By including this broad definition of a foreign company, the amendments appear to have gone beyond serving the original intention expressed by the Government of curbing excessive speculation in the real property market for residential and commercial properties. The amendments will not only cause unnecessary delay and inconvenience, but it will also increase the cost of doing business for most locally incorporated companies with foreign interests when they purchase or lease land for their regular businesses rather than for speculative purposes. Most oil companies will, under these amendments, be now required to seek State Authority's approval and pay the RM100,000 levy per lot of land purchased or leased to construct service stations, redistribution centres, terminal operations, etc. In addition to paying full taxes as "resident companies", the oil companies are already heavily regulated under special licences issued under the Petroleum Development Act, the Industrial Co-ordination Act and various by-laws governing the development and operation of their refineries, terminals, service stations, distribution centres etc. State Authority's approval will add a further layer to the approval and licensing process which is already unwieldy and the levy will add further cost to the development of these outlets. The Government should distinguish between speculators and genuine dealings of real property for business purposes. We propose that the National Land Code be amended to exempt oil companies and other similarly affected locally incorporated companies with foreign ownership from the need to seek State Authority's approval. In addition, such genuine dealings in property should qualify for tax relief in respect of the levies paid to reduce related cost increases.

6. **Phasing out the Export Duty on Crude Oil**
The export duty on crude oil was introduced in 1980 when crude prices were nearly twice the prevailing crude prices. At current crude prices, this levy presents a significant disincentive to the upstream petroleum investments and should be phased out. Elimination or further reduction of the duty rate (from current rate of 20% reduced per the 1994 Budget Speech) will improve the economics of developing small fields and encourage marginal activities.

7. **Reviewing Import Duty on Imported Offshore Platform Components**
Currently, imported offshore fabricated structures are subject to duties ranging from 20% for jackets to 25% for modules. This tariff protection reduces the incentive for Malaysian fabricators to be competitive with foreign fabricators in bidding for fabrication of projects in Malaysia. The phasing out of the import duty will increase the competitiveness of the local fabrication industry which in turn will help mitigate the upward trend in development costs and assist the upstream petroleum industry in their cost reduction efforts. Further, this would be consistent with national objectives and World Trade Organisation Agreement to reduce and remove protectionist tariffs.

Construction Industry Development Board Malaysia (CIDB)

By
Tan Iee
Tax Manager
Ernst & Young

Introduction

The Construction Industry Development Board (CIDB) is established with the aim of developing the construction industry into a major contributor to the national economy. It will also help the government to determine the sector's need for skilled construction workers through its exercise of registering local and foreign contractors and construction workers. The Board also has plans to provide training of workers, research, improvement of construction techniques and promote quality assurance in the construction industry.

The establishment of CIDB is timely as most Malaysians are still unable to forget the tragic incident at the Highland Towers, the landslide at Genting Highlands and other mishaps at construction sites. It is hoped that the Board will be successful in its function to regulate the construction industry and ensure that quality of the construction works is enhanced and the capability of the construction workers is adequate to undertake the jobs they are engaged.

Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 (Act)

With the enactment of this legislation, the Construction Industry Development Board Malaysia (CIDB) was formed to enforce the regulations and rules set forth by this Act. The date of coming into force of this Act is ***1st October 1995***. Under the Act, it is mandatory for all contractors, both local and foreign, who employ a minimum workforce of three at their construction sites to register with the Board. This Act is relatively simple as it has only 41 Sections and 3 Schedules. The important sections and schedule are as follows:

"Contractor" means a person who undertakes to carry out and complete any construction works

Section 2 - Definitions

"Contractor"
means a person who undertakes to carry out and complete any construction works;

"construction works"
means the construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of-

(a) any building, erection, edifice, structure, wall, fence or chimney, whether constructed wholly or partly above or below ground level;

(b) any road, harbour works, railway, cableway, canal or aerodrome;

(c) any drainage, irrigation or river control works;

(d) any electrical, mechanical, water, gas, petrochemical or telecommunication works; or

(e) any bridge, viaduct, dam, reservoir, earthworks, pipeline, sewer, aqueduct, culvert drive shaft, tunnel or reclamation works,

and includes any works which form an integral part of, or are preparatory to or temporary for the works described in paragraphs (a) to (e), including site clearance, soil investigation and improvement, earth-moving, excavation, laying of foundation, site restoration and landscaping;

"Construction site supervisor" means a person assigned to the construction site by the contractor to supervise the construction works;

"skilled construction worker" means a person possessing the accepted level of skill as determined by the Board of one or more of the trades as listed in the Third Schedule.

Section 4 - Functions and Powers of the Board

The functions of the Board are:-

(a) to promote and stimulate the development, improvement and expansion of the construction industry;

(b) to advise and make recommendations to the Government on matters affecting or connected with the construction industry;

(c) to promote, stimulate and undertake research into any matter relating to the construction industry;

(d) to promote, stimulate and assist in the export of service relating to the construction industry;

(e) to provide consultancy and advisory services with respect to the construction industry;

(f) to promote quality assurance in the construction industry;

(g) to encourage the standardization and improvement of construction techniques and materials;

(h) to initiate and maintain a construction industry information system;

(i) to provide, promote, review and co-ordinate training programs organised by public and private construction training centres for skilled construction workers and construction site supervisors;

(j) to accredit and register contractors and to cancel, suspend or reinstate the registration of any registered contractor; and

(k) to accredit and certify skilled construction workers and construction site supervisors.

The powers of the Board are:—

(a) to carry on all activities, particularly activities in respect of the construction industry, the carrying on whereof appears to it to be requisite, advantageous or convenient for or in connection with the performance of its functions;

(b) to award certificates of proficiency;

(c) to provide financial assistance in the form of loans or otherwise to persons engaged in the construction industry for the purpose of promoting the said industry and provide any guarantees on their behalf;

(d) to impose fees or any other charges as it deems fit for giving effect to any of its functions or powers;

(e) to do such other things as it deems fit to enable it to carry out its functions and powers effectively;

> The contractor is employing less than 3 workers for carrying out the construction works

(f) Pursuant to Section 27(1), the Board may request information from any person (which is within the person's knowledge or which he is able to obtain) relating to any contractor or any construction works. Failure to comply may be liable to a fine not exceeding RM500.00 and in the case of a continuing offense, the defaulter may be fined up to RM500-00 each day.

(g) Under Section 30, the Board is empowered to send a notice to an unregistered contractor to stop him from carrying on construction works. Failure to comply may be liable to a fine not exceeding RM500.00 and in the case of a continuing offense, the defaulter may be fined up to RM500.00 each day.

(h) Under Section 37, the Board can make such regulations as may be expedient or necessary for the better carrying out of the provisions of this Act.

Sections 25 to 31 - Registration of Contractors

All construction contractors, both local and foreign must register with the CIDB before they undertake to execute and complete any construction works in Malaysia except those exempted by the Minister. The Minister may exempt any person or class of persons from any or all the provisions of this Act on the following grounds:-

(a) that the contractor is carrying out construction works for the purpose of building a residence for his own use;

(b) that the contractor is employing less than 3 workers for carrying out the construction works;

(c) for any good reason which is consistent with the purposes of this Act.

Contractors having current ongoing projects have been given 12 months (from 20.7.1995 to 19.7.1996) grace period to register with the CIDB. Section 29 states that any person who carries out and complete any construction work without being registered with the CIDB will be fined up to RM50,000-00. The unregistered contractor will also be disallowed to bid in construction tender. The CIDB may also direct an unregistered contractor to stop his construction work and failure to comply may be subject to a fine of up to RM500-00 each day.

Section 32 - Registration of Construction Workers and Site Supervisors

For the accreditation and certification function of the CIDB, the construction site supervisors and the following skilled construction workers are requested to forward their application for registration:-

1. Concretor
2. Bar-bender
3. Carpenter
4. Bricklayer/Mason
5. Plasterer/Pavior

6. Tiler
7. Painter
8. Joiner
9. Metalworker
10. Drain-layer
11. Glazier
12. Welder
13. Construction Plant Operator
14. Plumber
15. Licensed Electrician

It should be noted that there is **no penal consequences for non-registration** by the site supervisors and construction workers.

Section 34 - Levy

Every registered contractor must notify CIDB on each construction contract having a contract sum above RM500,000-00 and pay a **levy of 1/4 (0.25)%** on the contract sum before the commencing of construction works. A registered contractor who fails to pay the levy imposed will be subject to a penalty of not exceeding RM50,000.00. The Contract sums has been defined to mean the consideration for a contract in respect of any construction works.

Section 41(2) states that any contractor who is carrying out any construction works pursuant to a contract executed before the commencement of this Act shall be **exempted from payment of the levy**. The imposition of this levy is single tier only.

REGISTRATION OF CONTRACTORS (CONSTRUCTION INDUSTRY) REGULATIONS 1995

These regulations which comes into force on **15th September 1995** specify the registration requisites. There are three registration categories, namely—

(1) Civil Engineering Construction,

(2) Building Construction, and

(3) Mechanical and Electrical

which are further classified into various specialization groups. There are 7 grades for each category (See Appendix A).

Application Forms

Application forms are available and sold for RM5-00 at:-

Registration and Levy Unit
CIDB, Level 19,
Menara Dato' Onn, PWTC,
Jalan Tun Ismail,
50480 Kuala Lumpur.

Local Contractors

Local contractor is not defined anywhere in the Act or Regulations. Generally, a local contractor is one who must have at least 70% local equity. An applicant will only be considered for registration if the CIDB satisfies that the applicant—

(a) has registered his business with the Registrar of Businesses or Companies. In this respect, sole-proprietorship and partnership must submit certified true copies of Form A (Business Registration) and Form D (the latest Certificate of Registration). For companies, certified true copies of Memorandum and Articles of Association, Form 8/9 (Certificate of Incorporation), Form 24 (Return of Allotment of shares or Annual Return of Company having share capital) and Form 49 (Returns giving particulars in Register of Directors, Managers and Secretaries and Changes of Particulars) have to be submitted.

(b) an applicant who undertakes to carry out any electrical works must be registered as an Electrical Contractor and holds a Certificate of Registration as an Electrical Contractor issued under the Electricity Regulations 1994. The applicant must submit certified copy of Electrical Contractor's License or the relevant license issued by Jabatan Bekalan Elektrik dan Gas.

(c) possesses the **experience** to execute any construction works and employs an adequate number of employees on a full time basis possessing the required experience or qualification recognised by the CIDB. The applicant may submit documentary evidence such as letter of award, copy of completion certificate, etc. for each project in the last 5 years. A sub-contractor may submit the sub-contract agreement or other documentary evidence.

The applicant may also submit a list of key technical personnel employed by him with particulars such as name, i/c number, race, nationality, designation, experience and documentary evidence of their academic or professional qualification.

(d) has **sufficient financial resources** to carry out any business as a registered contractor. The applicant has to provide information of his bank(s)/ financial institution such as account number, credit facility and has to submit bank statements for the last 3 months prior to the date of application together with a certification from his bank. The format of the certification is shown at the last page of the application form. In relation to companies, they must sub-

> The contractor is not permitted to execute any construction works or participate in any tender after the expiry of his registration unless it is renewed

mit an audited financial report for the last financial year.

(e) has paid the processing fee as shown in Appendix B.

(f) has complied with any other terms and conditions as may be determined by the Board from time to time.

Responsibilities and Obligations of Local Contractors

(a) The contractor must comply with the provision of the Act, the regulations made and any term, condition or restriction imposed by the Board from time to time.

(b) The contractor is not permitted to execute any construction works or participate in any tender after the expiry of his registration unless it is renewed.

(c) The contractor is not allowed to undertake any construction project which exceeds the value of construction works specified under the registration grade nor any construction works which is outside his registered category.

(d) The contractor must submit information regarding any new construction contract within 30 days of the award.

(e) The Certificate of Registration must be displayed at the place of business of the registered contractor. The registration number of the contractor must be displayed on the signboard at each construction site.

Foreign Contractors

(a) Foreign contractors / companies are not allowed to participate in a tender for any construction works unless they hold a valid Certificate of Provisional Registration. This certificate of provisional registration which cost RM500-00 is valid only till the closing date or extended closing date of the tender and is not transferable. The CIDB will issue the certificate of provisional registration if they are satisfied that:-

i) the foreign contractor possess the experience to execute the construction works;

ii) the foreign contractor possess sufficient financial resources to carry out any business as a contractor;

iii) the foreign contractor employs an adequate number of employees possessing the required experience or qualifications as determined by the Board.

iv) the processing fee (see appendix B) has been paid;

v) the foreign contractor has complied with any other terms and conditions as may be determined by the Board.

(b) A foreign company / contractor who is awarded with a construction project must register with the CIDB. The registration fee is RM5,000-00. However, if the same foreign company / contractor has paid RM500-00 for a certificate of provisional registration, he needs to pay RM4,500-00 only. The certificate of registration as a registered foreign contractor is for one construction project only and valid for the period of construction. This Certificate is not transferable. If for any reasons the date of completion for the project is extended, the Contractor shall apply to the Board within 14 days before the expiry of the validity of the certificate of registration to extend the validity of the certificate. The application must be substantiated with documentary evidence.

> The foreign contractor has registered his business with the relevant authorities under any written law

(c) The CIDB will issue the certificate of registration to a foreign contractor if they are satisfied that-

i) the foreign contractor has been issued with a letter of award or a letter of acceptance or any other form of acceptance in relation to a construction contract in respect of the construction works;

ii) the foreign contractor has registered his business with the relevant authorities under any written law;

iii) the foreign contractor has complied to the terms and conditions required for applying the certificate of provisional registration.

It should be noted that a foreign contractor cannot participate in the tender of any other construction project even though he is a registered contractor for a specified construction project. The foreign contractor will only be allowed to participate in the tender of a construction project if he holds a provisional certificate of registration for that project.

Akin to local contractors, the foreign contractor must display his Certification of Registration at his place of business and his registration number must be displayed at the signboard of each construction site.

Processing and Approval of Application

On receiving the application form, the Board will process to ensure that the applicant has met the

criteria for registration. They will then send a notice to the applicant informing him of the approval and also the terms, conditions and restrictions of the registration. They will also demand the applicant to pay the registration fee as shown in Appendix B. Upon receipt of the registration fee the Board will issue the appropriate certificate of registration which has a valid period of 1 - 3 years.

If the application cannot be approved, the Board will notify the applicant in writing of the disapproval.

Renewal of Registration for foreign and Local Contractors

There is no renewal of registration for foreign contractors as each project requires a separate application for registration. The local registered contractors may apply for renewal of registration within 60 days before the date of expiry of the registration, but the application must be received by the Board not later than 30 days from the expiry of the registration. Late renewal will be subject to a fine of RM200-00 provided that the registration has not been expired.

The renewed certificate of registration is also valid for a period of 1 - 3 years.

Non-transferability of Registration and Responsibility of Contractor

A registered contractor cannot transfer his registration to any other person for it to be used by that person to carry out and complete any construction works. Where there is a change in the capital, particulars relating to experience / qualification of employees, employment, ownership, or the board of directors or management, the contractor must inform the Board within 30 days of such change.

Where a new certificate of registration has to be issued to incorporate any change, the contractor will be required to pay RM100-00 for the new certificate. If the change relates to upgrading of the grade of registration, the contractor will have to pay the difference of the registration fees between the two grades.

> The Board can cancel, suspend or revoke the registration of any registered contractor

Additional copy of Certificate of Registration or Replacement

A registered contractor may request for additional copies of the Certificate of Registration by paying a fee of RM20-00 for each copy. Replacement for original copy of Certificate of Registration is charged at RM100-00.

Revocation and suspension of registration

The Board can cancel, suspend or revoke the registration of any registered contractor if the registered contractor—

i) has been adjudicated a bankrupt;

ii) a winding-up petition in relation to the holder has been presented;

iii) contravenes or fails to comply with any provisions of the Act or Regulations;

iv) has obtained the Certificate by making false or fraudulent declaration, certification or representation either in writing or otherwise;

v) has abandoned any construction works undertaken without any good reason;

vi) is found to be negligent by the court or any board of enquiry established under any written law in connection with any construction works undertaken; or

vii) contravenes or fails to comply with the conditions of registration specified in the Certificate of Registration.

Before the cancellation, suspension or revocation of the registration of a registered contractor, the Board will inform the holder of the Certificate the written complaint against him and will give the holder a chance to explain in writing to the Board.

When the registration has been cancelled, suspended or revoked, the Certificate has to be returned to the Board within 14 days from the date of cancellation, suspension or revocation. In special circumstances, the Board may allow the holder of the Certificate whose registration has been cancelled, suspended or revoked to carry out and complete any existing construction works.

The holder of the Certificate of Registration whose registration has been cancelled, suspended or revoked may apply of re-registration after such period as the Board may allow.

A person who is aggrieved by the cancellation, suspension or revocation of his registration may within 30 days of such cancellation, suspension or revocation appeal to the Minister in writing for a decision and such decision will be final.

CONSTRUCTION INDUSTRY (COLLECTION OF LEVY) REGULATIONS 1996

These regulations which is effective from **13th June 1996** outlines the mechanism for the collection of the levy. According to the regulations, a registered contractor who has executed a contract on any construction works having a contract sum of **above RM500,000.00**

on or after 1st October 1995 must submit a notification in Form CIDB L1/96 (see appendix C) to the Board not later than 30 days after the commencement of these regulations. Where the contract on any construction works is executed or construction works commences on or after 1st July 1996, the notification must be submitted not later than 14 days after the date of execution of the contract or not less than 14 days before the commencement of the construction works, whichever date is earlier. A contractor who applies for registration on or after 13th June 1996 has to submit the same notification within 30 days from the date of issuance of a valid certificate for registration. The deadline of the submission of notification can be extended subject to the approval of the Board.

It was reported by Business Times on 14th June 1996 that the CIDB chief executive has announced that the 0.25% levy will be imposed on contracts signed or construction works commenced on or after 15th July 1996.

The notification has to be submitted together with the following:—

(a) the letter of acceptance or letter of award, or any document that constitutes acceptance in relation to construction works;

(b) the contract which is signed by the parties thereto; or

(c) any document relevant to the execution of the contract on construction works.

A contract on any construction works is regarded as having been executed upon the occurrence of any of the following events:—

(a) the registered contractor has been issued a letter of acceptance or a letter of award or any form of document which constitutes acceptance in relation to construction works; or

(b) a contract is signed by the parties thereto so as to render the contract complete and effective.

Upon receipt of the notification, the Board will determine the date of liability for payment of the levy and also the amount of levy. They will issue a notice informing the registered contractor the amount imposed, the deadline for payment and the place for which payment is to be made. The levy can be paid in the form of bank draft or banker's cheque in the name of CIDB.

In cases where a registered contractor commences or proceeds any construction works without notification, the Board will send a notice to the contractor requiring him to furnish all particulars and documents in respect of the contract on the construction works within a stipulated period. Basing on the particulars, the Board will send a notification of imposition of levy showing the amount and the deadline for payment. If the contractor fails to furnish the required particulars, an estimated notice of imposition of levy will be sent to him.

Registration of Skilled Construction Workers and Site Supervisors

The CIDB is in the process of regulating the practices of skilled construction workers and site supervisors. They have encouraged companies wanting to tender for a project to incorporate a condition in their contract that the contractors must employ workers who are registered with the Board. In its role of accrediting and certifying skilled construction workers, the Board will exempt workers from undergoing any skills test during the first two years its registration exercise. After the exemption period expires, the workers will be tested on their competency or ability.

There are three registration categories and the forms to be used for application are:-

i) Skilled Construction Worker (local)
 - **Form RSW (T) 1/95**

ii) Skilled Construction Worker (foreign)
 - **Form RSW (A) 1/95**

iii) Construction Site Supervisor (local only)
 - **Form RSS 1/95**

Currently, there is no provision for registering foreign construction site supervisors. The processing fee for registration is as per appendix B which is RM20.00 for skilled construction workers and RM40.00 for supervisors. The processing fees can be paid in the form of cash, postal order or cheque.

Applications can be made directly by the applicants, their representatives or their employers. Each application form must be accompanied by two recent photographs (sized 35cm x 30cm or I/C size) and a certified copy of identity card of the applicant. In one section of the application form, a certification and endorsement (official chop of the endorser) from the employers, project engineers who oversees the applicant's work or the construction workers' union of which the applicant has been a member for not less than 6 years is required.

The processing will take around 2 months and a registration card with the applicant's photograph will be issued by the Board. The construction workers and the site supervisors have to carry their registration cards at work in all construction sites.

REGISTRATION REQUISITES

Appendix A

Registration Grade	Capacity RM	Experience		Financial Capacity	Full Time Employees
		Average Annual Value of Work for 3 years RM	Largest Project Value During Last 3 years RM	Paid-up Capital or Net/Capital Worth RM	Minimum Personnel* Resources Requirements
G1	Not Exceeding 100,000.00	100,000.00	75,000.00	5,000.00	One group C with Minimum 2 years relevant experience
G2	Not Exceeding 500,000.00	500,000.00	375,000.00	25,000.00	One group B with Minimum 2 years relevant experience
G3	Not Exceeding 1,000,000.00	1,000,000.00	750,000.00	50,000.00	One group A with Minimum 2 years relevant experience or Two group B, 1 of whom must have 3 years experience
G4	Not Exceeding 3,000,000.00	3,000,000.00	2,250,000.00	150,000.00	One group A with Minimum 5 years relevant experience
G5	Not Exceeding 5,000,000.00	5,000,000.00	3,750,000.00	250,000.00	Two group A, one of whom must have minimum 5 years relevant experience
G6	Not Exceeding 10,000,000.00	10,000,000.00	7,500,000.00	500,000.00	Two group A, one of whom must have minimum 8 years relevant experience
G7	No Limit	15,000,000.00	11,250,000.00	750,000.00	Three group A, one of whom must have minimum 10 years relevant experience

Note:
- * Group A - Degree holder in construction related fields.
- Group B - Diploma holder in construction related fields or other degree holder with experience in construction works.
- Group C - Others who are involved in technical activities on site with experience in construction works and accepted by CIDB.

The Council & Staff of

MALAYSIAN INSTITUTE OF TAXATION

Wish All Hindu Readers

A Happy Deepavali!

FEE / LEVY AND PENALTIES PAYABLE

APPENDIX B

Type	Amount RM	Particulars
A. Processing Fee	50.00	New registration and provisional registration
	50.00	Registration by Foreign Conractors
	30.00	Renewal, upgrading, additional capacity / specialization
	30.00	Changes in particulars
	40.00	Construction Site Supervisors
	20.00	Construction workers
B. Registration Fee [Certificate of Registration]		
Grade 1	20.00	Per annum for local contractors
Grade 2	80.00	Per annum for local contractors
Grade 3	150.00	Per annum for local contractors
Grade 4	350.00	Per annum for local contractors
Grade 5	700.00	Per annum for local contractors
Grade 6	1,000.00	Per annum for local contractors
Grade 7	1,400.00	Per annum for local contractors
	500.00	Per tender (Certificate of Provisional Registration)
	5,000.00	Per project for foreign contractors
C. Fee for Renewal of Registration		Half of registration fee according to the respective grades
D. Fee for Re-issuance of New Certificate		
	100.00	Additional category / Specialization
	100.00	Changes in particulars which necessitate the re-issuance of new certificate
	Difference between New and Old grade	Upgrading fees
E. Fee for Re-issuance of Copy of Certificate		
	100.00	Replacement of lost / damaged/mutilated certificate
	20.00	Additional copy of certificate
F. Levy for each Project Contract sum	Exceeding 500,000.00	1/4% of the Contract sum
G. Penalties Non-Registration	Exceeding 500,000.00	Carries out construction works without registration
Failure to stop construction works	500.00	RM500 each day for failure to comply to stop work direction by CIDB
Failure to pay Levy	Exceeding 50,000.00	
Failure to supply information requested by CIDB	500	

APPENDIX C

JADUAL
SCHEDULE

BORANG CIDB L 1/96
Form CIDB L 1/96

Borang Pemberitahuan
Notification Form

Peraturan-Peraturan Industri Pembinaan (Pungutan Levi) 1996
Construction Industry (Collection of Levy) Regulations 1996

(Peraturan 3)
(Regulations 3)

1. No. Pendaftaran Kontraktor:
   Contractor's Registration No.:
2. Nama Kontraktor:
   Contractor's Name
3. Alamat Surat-Menyurat:
   Correspondence Address

Tajuk Kerja Pembinaan *Title of the Construction Work (S)*	Alamat Tapak Kerja Pembinaan *Address of the site of Construction Work (S)*	*Tarikh Award Kerja *Date of of work Award*	Tarikh Mula Kerja *Date of Commence-ment of Work*	** Jenis Kontrak *Type of Contract*	Jumlah Kontrak *Contract's Sum*

Saya dengan ini mengaku bahawa maklumat yang diberikan di atas adalah benar dan lengkap.
I hereby declare that the information given above is true and complete.

Tarikh: ____________
Date

*** Tandatangan Kontraktor/Wakil Kontraktor
*** *Signature of Contractor/ Representative of Contractor*

Cap rasmi Kontraktor
Contractor's official stamp

Nama: ____________
Name

Huruf Besar
Capital Letter

Jawatan: ____________
Designation

Nota (*Note*)

* Sila Kepilkan salinan surat award
Please attach a copy of Letter of Award

** Masukkan kod yang berkenaan
01 - Conventional
02 - Turnkey
03 - BOT
04 - Design & Build

*** Potong mana yang tidak berkenaan
Delete whichever inapplicable

- WESTERN SAMOA - A Fast Emerging Offshore Centre in the Asia-Pacific Region

by
John W Hart
Managing Director- South Pacific, Bank of Bermuda

Western Samoa is well situated (both physically and generally) to provide offshore services, particularly to clients located in the Asia-Pacific Region, with the time zone being one of many favourable factors.

Western Samao comprises a group of nine islands situated in the South Pacific Ocean approximately 4,350 kilometres south-west of Hawaii and 4,350 kilometres north-east of Sydney, Australia. Local time is 11 hours behind GMT and 6 hours behind New York. Therefore, for example, 9.00am in Hong Kong is 7.00pm the previous day in Western Samoa.

Western Samoa has a population of approximately 160,000 people, of whom 90% are indigenous Polynesians.

In 1962 Western Samoa became the first fully independent sovereign state in the South Pacific. Western Samoa has a parliamentary system of government based on a written constitution. The country is politically very stable.

The legal system is based on English common law, with much of the domestic law derived from New Zealand legislation.

The offshore centre was established in Western Samoa in 1987. The legislation was largely modelled on that of the Cook Islands, with some enhancements.

Western Samoa is well situated (both physically and generally) to provide offshore services, particularly to clients located in the Asia-Pacific Region, with the time zone being one of many favourable factors.

International Companies

Western Samoan international companies are very favourably priced in comparison to, for example, BVI companies and are steadily increasing in popularity in jurisdictions such as Hong Kong.

The international Companies Act 1987 provides for the flexible and straightforward administration of international companies and the Act has some features not found in other jurisdictions, including:

- The name of the company can be registered in both English and in Chinese characters
- The Memorandum and Articles of Association of the company can be registered in both English and Chinese
- There is no requirement for a resident director or secretary - a resident agent is sufficient
- There is no requirement for accounts, Minute Books, or the Share Register to be maintained in Western Samoa

The ability to have the name and constitution documents in Chinese do well as English combined with the fact that the People's Republic of China has full diplomatic representation in (along with a long-standing relationship with) Western Samoa makes Western Samoan companies ideal vehicles for China trade, or joint ventures with participants in the PRC.

Western Samoa has enacted LLC (Limited Life/Liability Company) legislation designed to comply with United States IRS requirements LLCs are quite distinct from and should not be confused with ordinary limited liability international companies incorporated in the jurisdictions.

Another possibly unique feature of the Western Samoan international company regime is the ability to incorporate long-term companies with a 5, 10 or 20 year duration. These companies provide enormous savings in both government registration and trustee company fees, and are well suited for long term investment projects and so forth.

Incorporation of international companies can usually be achieved within one day. A wide range of titles can be used to indicate incorporated status such as:- Inc., Ltd, Bhd, and so on (whether in long or short form).

There is no minimum share capital requirement. Shares may have a par value or may be of no par value. Shares may be designated in any currency other than the currency of Western Samoa. Companies may be limited by guarantee.

Foreign companies may register as such pursuant to the International Companies Act 1987, thereby

creating a branch in Western Samoa.

This is by no means an exhaustive summary of the many features and benefits of Western Samoan International companies.

Offshore Banking

The Offshore Banking Act 1987 provides for the licensing of banks that wish to carry on offshore banking business from Western Samoa. The holder of a licence must be a company and includes either an international company or a foreign company registered as such under the International Companies Act 1987.

There are three classes of licence:

1. An "A" Class Licence requires a paid up capital and unimpaired reserves of US$10 million, and carries the right to maintain a permanent establishment in Western Samoa. There is no restriction on the type of offshore banking business that may be conducted except that there is a prohibition on transactions in the currency of Western Samoa and with residents of Western Samoa. The "A" Class Licence is valid for 5 years, with a licence fee payable annually.

2. There are two "B" Class Licences. The first "B" Class Licence requires a paid up capital and unimpaired reserves of US$2 million. The type of banking business and the currencies permitted are specified in the licence. The banking business must be conducted through a registered trustee company, unless permission has been granted to maintain a business office in Western Samoa.

3. The second "B" Class Licence requires a paid up capital and unimpaired reserves of US$250,000. The type of banking business and the currencies permitted are specified in the licence also. In addition, the Licensee may not solicit or accept deposits from the general public and moreover the persons from whom deposits can be accepted are specified in the Licence. The banking business must be conducted through a registered trustee company.

As with international companies, the fees for establishment and administration of Western Samoan offshore banks are competitive.

International Trusts

The International Trusts Act 1987 provides for the registration of international trusts. The trust deed does not have to be disclosed for the purpose of registration, the requirements merely being the name of the "trustee" the date of the instrument creating the trust, the name of the trust, and a certificate from the trustee that the trust (upon registration) will be an international trust in terms of the International Trusts Act 1987. Registration must be renewed annually.

The Western Samoan International Trusts Act takes a balanced approach to asset protection issues. If a creditor is able to prove in the Western Samoan courts that the trust was a settled or a disposition was made in favour of the trust with the intent of defrauding creditors, then the settlement or disposition can be set aside.

Insurance Business

The International Insurance Act 1988 provides for the licensing of companies that wish to carry on offshore insurance business from Western Samoa. Such companies can be either international companies or foreign companies registered as such under the International Companies Act 1987.

The capital recquirements for Licensees are as follows:

- General insurance
  - US$500,000 issued capital and unimpaired reserves
- Long term insurance business
  - US$500,000 issued capital and unimpaired reserves
- Reinsurance business
  - US$200,000 issued capital and unimpaired reserves
- Captive insurance
  - US$100,000 issued capital and unimpaired reserves

Licensees must conduct their business through a registered trust company unless permission is obtained from the Minister of Finance to maintain a permanent establishment in Western Samoa.

Overview - Advantages of the Western Samoan jurisdiction

Western Samoa's emergence as a popular offshore centre in the Asia-pacific Region is attributable to (inter alia) the following factors:

- Convenient time zone.
- Self-governing and politically stable.
- Common law/Commonwealth jurisdiction.
- Twenty-four hour turnaround for incorporations.
- Priced competitively with BVI and other jurisdictions with similar cost structures.
- Advantageous features of international companies or China trade/joint ventures.
- Good professional infrastructure.
- Supportive government and regulators - prospect of promoting new offshore legislation within a short time frame.

WHAT IS VENTURE CAPITAL

By
Sabariah Arshad

Venture capital is long-term capital which is invested in high risk ventures typically new companies and especially new technologies. It offers the venture capitalist the possibility of large capital gains to compensate for the high risks involved in such investments.

In general, the venture capital industry consists of firms that manage substantial amount of capital for other investors (both individuals and larger firms) and in return charges a fee for managing these funds.

The venture capital firms are run by experienced managers who are able to evaluate risky investment proposition. Some of the venture capital firms specialise in investment in start-up operations, whilst other refuse to invest in any venture that has not established a record of sales and earnings. Venture capital firms tend to limit their investment to firms that are likely to grow rapidly, hopefully achieving the size necessary to permit a stock floatation in the public market or perhaps to become an attractive acquisition by the public corporations. Either action will permit the venture capital firms to get its money back, plus a profit, and to start the cycle again.

Many of the venture capital firms specialise in certain industries, for example, some invest only in energy related companies, while other limit their investment to high technology businesses.

A venture capital investment typically:

(i) involves equity or equity-related participation in the form of a direct purchase of shares or through convertibles or warrants;

(ii) is a long-term investment discipline which usually requires between 5 to 10 years before receiving any significant return; and

(iii) requires an active ongoing involvement by the investors in the strategic management of the investee companies.

> Venture capital is long-term capital which is invested in high risk ventures

Venture capitalists tend to be actively involved with their investments, bringing general management and particular industry knowledge to help ensure that their investments are successful. Venture capitalists tend to invest in good entrepreneurs rather that good projects. The venture capitalists seek to add value beyond their investment capital through the provision of active and valuable strategic management expertise to the highly motivated entrepreneurs.

For the investment, the venture capitalists normally have a minority rather than controlling interest which means that the entrepreneurs are playing a dual role of being the owner and employee as well. It is crucial to note that the primary objective of venture capitalists is to achieve a superior rate of return through the eventual and timely disposition of their investments, hence the minority involvement is preferred.

Venture capital represents an active rather that a passive form of financing. Since the venture capitalist take more risk than conventional lenders, the active involvement in the investee company is viewed as a means of providing some degree of protection for their investment. Venture capital, therefore, is not generally the ideal financing route for a company which is not prepared to accommodate an active outside investor.

STAGES OF VENTURE CAPITAL MANAGEMENT

Stages of investment for venture capital includes the following:

(i) Seed Capital
This is capital provided at a very early stage i.e. to build a prototype of an innovative idea and to conduct a limited test market, or perhaps to write a business plan and build a management team to a point at which the business can be funded as a start-up by a larger venture capital company.

> The venture capital firms are run by experienced managers who are able to evaluate risky investment proposition

(ii) Start-up Capital
This is capital to fund a start-up. The products will usually be developed and a management team in place and there will probably be some data on the market.

(iii) Early Stage Development
This is capital to fund the development of a business which has been established in a small way and now needs capital to expand. It is unable or unwilling to raise this as debt, usually because it has exhausted its ability to offer security to a bank.

(iv) Later Stage Development - Expansion
This is capital for a more mature business, probably with a profitable track record of several years, seeking capital to expand and develop e.g. perhaps by opening a second factory in a different location, or by establishing a marketing network overseas.

> For the investment, the venture capitalists normally have a minority rather than controlling interest

DEBT VERSUS EQUITY

There are two fundamentally different types of capital, equity or share capital, and debt or loan capital.

Equity capital or share capital is money invested in a business in exchange for a share of that business. The ownership of shares in a business entitles the owner to his share of both the future profits and capital growth of the business.

Debt or loan capital is capital which is invested in the business in exchange for the legal requirement to pay a certain sum as interest each year on the loan capital provided, and possibly also to repay some of the capital according to an agreed schedule. Debt will usually be secured against the assets of the business and the personal assets of the directors by means of a personal guarantee.

The advantages of equity are as follows:

(i) No automatic annual payment is due, and the company is therefore safer from premature closure in the early years when profits may be small or non-existent.

(ii) An investor providing equity will have the same financial risk/reward profile as the entrepreneur; if the company does badly the decline in the value of the shares will affect both equally, while if the company does well both gain equally from the increase in the value of the shares.

(iii) A business may be thought of as having a certain capacity for debt, based on its ability to pay interest out of profits, and its ability to secure that debt against assets. Once this capacity is reached, it becomes difficult to raise more debt. Since it takes a comparatively long time to raise fresh equity capital, whereas short-term debt may be raised very quickly provided the company is within its natural limits, it is prudent for a new business to have sufficient equity to give it a reserve capacity to raise extra capital as debt should the need arise. If the maximum debt possible is raised to begin with, there will be no reserve capacity to raise extra capital in a hurry if this becomes necessary.

(iv) If a new business takes longer to get started than expected, as is often the case, and needs a further round of financing, it is much more difficult to raise extra capital if there is a large proportion of debt, since new investors will be reluctant to see their investment possibly being used to repay an old debt rather than to develop the business. If there is no debt by contrast, the equity shareholders will have only to agree to issue new shares, thereby reducing their own percentage holdings in the company, and further capital may be raised by selling these new shares.

(v) An investors who provides a significant sum as equity is likely to take an active interest in the company, possibly becoming a director, and his knowledge, skills, experience and encouragement will be available to the company. In many cases these may be as important to the success of the company as his investment.

The disadvantage of equity is that the entrepreneur surrenders a share of the future financial benefit that will accrue to the owners of the business if it is successful.

ADVANTAGES/DISADVANTAGES OF VENTURE CAPITAL

The advantages of venture capital financing are:

- **Sharing the financial burden**
  The venture capitalist share risks with the entrepreneur. It also increases borrowing capacity of the investee company.

- **Enhance credibility**
  Having a venture capitalist as a partner is perceived to be a 'stamp of approval' investment since venture capitalist would have done

extensive homework and due diligence before parking their funds into the company.

- **Strategic alliances**
  Information that can add more value to the company is available for example business networks, technology, inter-industry & international linkages.

- **Professional guidance**
  The venture capitalist can provide guidance on such matter like strategy management, financing & recruiting. S/He is also able to provide broad perspective experience and industry intelligence i.e. recognizing patterns and being aware of external factors.

- **Shorten Lead Time to listing**
  The company will have available fund to undertake rapid expansion.

- **Strengthen listing potential**
  The authorities perceived venture-backed floatation's favourably.

The disadvantages of venture capital financing are:

- **Dilutes ownership**
  Outside investors have a piece of the company. If the business is successful, it may be work out to be more expensive than debt.

- **Owner manager accountable to owner-investors**
  The entrepreneur is answerable to the venture capitalist and must keep the latter abreast with the development of the company.

VENTURE CAPITAL INVESTMENT PROCESS

Basically, there are two perspective to be considered i.e. from the point of view of the entrepreneur and venture capitalist respectively.

a. **Entrepreneur**
An entrepreneur who is interested to invite a venture capitalist as its' partner usually would have done the necessary business plans for his company. S/He would then need to approach and select the venture capitalist that s/he is most comfortable with. Depending on the urgency of investment, the time taken from initial negotiation to investment by the venture capitalist could take as little as two weeks and as long as five months (and in some cases even longer). During this ongoing negotiation process, the entrepreneur would need to disclose all relevant company information to the venture capitalist. Subsequently, after the investment, the entrepreneur would need to furnish regular account reports on his/her company.

b. **Venture Capitalist**
After the initial contact, the venture capitalist will typically analyze the business plan in detail, value the business and conduct due diligence on the company. The latter includes speaking to all key members of the management team as well as to the customers, suppliers or experts and seeking management references from former superiors and business contacts.

Venture capitalists will focus on five key variables in their investment decisions.

i **Market**
Venture capitalist try to research the market's size and growth rate to estimate its potential based on available information and logical assumptions. Many potential investors use market forecasts independently prepared by industry experts.

ii. **Management**
Management is certainly the most important variable for venture capitalist after market. Being an entrepreneur is a necessary but not sufficient condition to obtaining venture capital financing. It is also important to have a strong management team, possessing complementary functional skills and backgrounds.

iii. **Differentiated products**
A successful first products must possess significant adventage over existing products. However, differentiated products provide little commercial value if customers will not buy them since none have ever seen anything like it before.

Venture capital represents an active rather than a passive form of financing

iv. **Company Strategy**
A focused strategy matches well with a young company's strengths such as efficient product development, creativity and special technology and the ability to respond to special customer needs. This also covers the financial data of the company which include the actions necessary to implement the business plan, together with the timing and cost of each. The cash flow projections will also be looked at to form the basis for discussions about finance.

Venture capitalists try to research the market's size and growth rate to estimate its potential based on available information and logical assumptions

v. Valuation
Venture capitalists analyze the value of a particular deal on a 'pre-money' basis to determine the value of the company before new money is invested.

Once the venture capitalist is satisfied that the company is a viable investment, it will offer a commitment letter and draw up the legal documentation. Normally, a venture capital firm places a representative on the board of the company to provide on-going assistance in achieving corporate goals. The representative will contribute industry knowledge, financial skills and operating advice.

TYPES OF VENTURE CAPITAL FIRMS IN MALAYSIA

Currently, there are three major types of venture capital firms in Malaysia, namely,

i. Joint ventures between local and foreign venture capital firms

Since venture capital is relatively new in Malaysia, a number of local venture companies have established joint-ventures with foreign venture capital management firms. In these joint-ventures, the local firms provide the local industry knowledge and network while the foreign counterparts provide the venture capital expertise.

According to the Bank Negara 1994 Annual Report, as at the end of 1993, 7 of the 17 venture capital firms operating in Malaysia have foreign participation. One is wholly foreign-owned and the balance with foreign equity participation ranging between 2.4% to 49%.

Among the venture capital firms established through joint-venture between local and foreign firms are as follows:

a. Malaysian Technology Venture One Sdn Bhd
Local company
Malaysian Technology Development Corporation

Foreign partner
Hambrecht & Quist Inc. (USA)

b. PNBNJJ Holdings Sdn Bhd
Local Company
Permodalan Nasional Berhad

Foreign partner
Nomura Jafco (Japan)

c. B J. Walden Venture One Sdn Bhd
Local Company
Bank Industri Berhad

Foreign Parnter
Walden Group (USA)

d. Bank Pembangunan Venture Fund
Local Company
Bank Pembangunan Berhad

Foreign Partner
Nikki Group (Japan)
Bank of Communication (Taiwan)

ii. Independent Venture Capital firms

Several independent venture capital firms whether local or foreign have also been established and some of these are listed as follows:-

a. Mayban Ventures Sdn. Bhd.

b. Mezzanine Venture Capital Sdn. Bhd,

c. Ban Hin Lee Bank Venture Capital

There are also other foreign venture capital firms based in Singapore and Hong Kong but have made selective investments in Malaysia which include the Singapore-based NIKKO Group or the CEF Group of Hong Kong.

iii. Venture Capital activities of large institutions

Some local public institutions also invested in companies in the form of venture capital. Among these institutions are:-

a. Lembaga Urusan dan Tabung Haji

b. Lembaga Tabung Angkatan Tentera

c. Permodalan Nasional Berhad

PERFORMANCE OF VENTURE CAPITAL INVESTMENT IN MALAYSIA

i. Exit track records of venture capital in Malaysia

Most of the venture capital firms in Malaysia are new and as such are at the investment stage. As their investments are mainly in early stage deals, we will only be seeing divestment of their investments in three to four years' times.

Excluding the investments of elected Bumiputera institutions which invest in venture capital, the exit track record of venture backed companies via listing on the KLSE is not very encouraging. Some of the venture-backed companies that gained listing on the KLSE include:

Companies	Venture Capital Managers
TH Loy Berhad	BI- Walden Management
MSCB Systems Berhad	Seavi Ventures
Tru-tech Berhad	PNB-Nomura Jafco
Loh Kim Teow Industrial Berhad	MTDC-H&Q Venture Capital Management
Atlan Holdings Sdn Bhd	MTDC-H&Q Venture Capital Management

Although we do not have an exhaustive list of venture backed investments in Malaysia, we expect a dramatic rise in venture backed exits via listing on the KLSE in the near future. MTDC expects to list at least four of its investee companies within the next two years. PNB-Nomura will be listing more of their investee companies on the KLSE within three years.

A number of other venture-backed companies have also been performing very well. These include:

a. UNISEM Sdn. Bhd., venture backed by the BI-Walden Group

b. LS Technology Sdn. Bhd., venture backed by H&Q Asia Pacific (Singapore)

c. Total Technology Sdn. Bhd., venture backed by CEF Asia

ii. Venture Capital Investment Activities in Malaysia

Fueled by the fast growing Malaysian economy which provided the various venture capital opportunities, venture capital investment activities have been increasing in recent years as summarized by the Bank Negara figures:-

Years	1994	1993
Amount Invested (RM million)	146	64
Number of companies	67	32
Average investment per deal (RM million)	2.17	2
Total fund mobilized (RM million)	478	412
Number of venture capital companies	17	14

Source: Bank Negara 1994 Annual Report

It is interesting to note that the average size of investment made by venture capital in RM2.17 million per deal which implies that the venture capital managers are reluctant to increase their exposure.

A successful first product must possess significant advantage over existing products

MALAYSIAN TECHNOLOGY DEVELOPMENT CORPORATION (MTDC)

MTDC is the national venture capital company. It was established by the Government in October 1992 to assist in the commercialization of research results and to promote the development of technology-based companies through venture capital. MTDC is a joint-venture between the government and sixteen large companies in Malaysia and is placed under the jurisdiction of the Ministry of International Trade and Industry (MITI). The largest shareholder of MTDC is Khazanah Nasional Berhad.

Currently, MTDC has a paid-up capital of RM78.4 million and has invested in a number of companies, including two public listed companies. Through its national mission to promote technology development in Malaysia, MTDC has established an extensive local business network and is continuously exposed to a wide range of investment opportunities in Malaysia and in other parts of the world.

MTDC VENTURE CAPITAL EXPERIENCE

MTDC contributes more than money to its' portfolio companies. MTDC insists in putting a member on the board of directors of company in which it has made a substantial investment. Thus MTDC takes on the role of advisor to the small business, whose managers generally have great expertise in some areas but limited experience in others.

MTDC is providing added value to investee companies since MTDC can provide many access that may be crucial for the investee firms to

grow and expand. MTDC will also provide the needed stimulus and grooming for the company to float its shares in the stock market, namely the KLSE.

MTDC is providing the following to its investee firms:

i) MTDC has numerous linkages and networking. These linkages includes MTDC's own portfolio companies, the co-investors of MTUC managed venture funds, research institutions and universities, and MITI's agencies. MTDC also forms venture capital syndication comprising several venture capital funds to invest in a business venture. As the result of the formation of such fund linkages, a pool of financial resources is available for the growth and development of the company.

(ii) MTDC specialises in high technology industry. Therefore MTDC has the expertise in this particular field.

(iii) The presence of MTDC, a venture capitalist, in an investee company gives support and hence provides comfort to any financial institutions which the investee companies has sought financial assistance. The impact will enhance the desirability of the investee companies in the eyes of the financial institutions.

(iv) MTDC has a large capital base therefore is able to inject fund for expansion of the investee companies. For example, MTDC's fund, Malaysian Technology Venture Two Sdn Bhd ('MTV-II'), a 100% Bumiputera Venture Fund, has a fund size of RM75 million. Having large capital base ensures that MTDC can provide stable financial support to its investee companies.

An exit mechanism for MTDC is to float the share of the investee companies in the KLSE. Therefore MTDC will, given the above, assist its investee companies to satisfy the requirements for floatation.

CONCLUSION

The benefits of venture capital financing for entrepreneurs are myriad. Venture capital managers seek to add value beyond their investment capital through the active and valuable strategic management expertise. This value adding that the venture capitalist provides is what differentiate a venture capital company from other forms of financing institutions.

Venture capitalist also has the ability to provide an array of financing alternatives to companies. Besides equity financing, companies often require other means of financing. Venture capitalist therefore must be able to provide such financing alternatives or to be able to arrange for such financing schemes.

The presence of venture capitalist enhance the profile of the companies. Generally, banks would be more favourable to the venture-backed companies. Multinational companies too would be favourable in providing subcontracting jobs to venture-backed companies. Venture-backed companies are also seen positively as they have more reliable management (since there is an internal policing by venture capital managers).

As there are significant benefits from being part of the venture capital's investee companies, a sense that they are part of select group can be established. Last but not least, venture capital managers dedicate time and effort for their companies. This will build close rapport with every management team in the companies.

Bibliography:

1. Brigham Eugene F. Fundamental of Financial Management - Fourth Edition.
2. Cary Lucius, The Venture Capital Report Guide to Venture Capital in the UK & Europe - Sixth Edition.
3. Asian Venture Capital Journal

RPGT -
Date of Acquisition and Disposal Substantially for Shares
(Summary of Case Stated - PKR 645 - Puan TSO)

FACTS

The Appellant, as trustee bought a piece of land from 5 individuals for RM350,000. The sale and purchase agreement was dated 16 November 1973 and the sum was paid in 4 instalments with the last instalment being paid on 23 December 1981. The Appellant was holding the property in trust for 10 individuals and this was not disputed by the Respondent.

On 1 December 1981, the Appellant, as trustee, sold the property to a company and it was agreed by the Respondent that the purchase price of RM2,837,000 "was satisfied substantially of shares". The 5 vendors transferred the property directly to the company and declared that it was transferred for a consideration of RM350,000. The vendors did not at any time transfer the property to the Appellant.

The Respondent assessed the Appellant on her share (1/10) of the gain on the basis that acquisition and disposal took place within 2 years. Subsequently an additional assessment was raised against the Appellant, as trustee in respect of the gain on the other 9/10 of the Property held by her in trust.

The Appellant appealed against both assessments.

ARGUMENTS

The Appellant contended that the date of acquisition was 16 November 1973 as there was a sale and purchase agreement entered into on that date. Paragraph 24(2) of Schedule 2 to the Real Property Gains Tax Act 1976 (the RPGT Act) pertaining to payment by instalments is inapplicable as the property was never transferred to the Appellant. Alternatively, paragraph 3(b) of Schedule 2 is applicable (no gain, no loss situation) as the transfer was substantially for shares.

The Appellant also contended that paragraph 35(1) of Schedule 2 is inapplicable i.e. that the trustee cannot be assessed on any chargeable gain as the ownership of the property was not formally vested in her.

The Respondent contended that both assessments were correct.

DECISION

The Special Commissioners decided on the three points raised by the Appellant as follows:

i) Paragraph 24(2) of Schedule 2 is applicable as three instalments were paid before coming into force of the RPGT Act and one instalment was paid after. The date of acquisition and disposal was therefore 1 December 1981;

ii) Paragraph 3(b) of Schedule 2 does not apply as there was no evidence to show that the company was controlled by the trust beneficiaries at the material time. Neither was there sufficient evidence to show that the transfer was "substantially" for shares; and

(iii) Paragraph 35(1) of Schedule 2 is applicable even though ownership of the asset was vested in some other persons and not in the trustee herself.

The appeal was therefore dismissed and the assessment confirmed.

Compulsory Payments Not Necessarily Deductible
(Summary Of Case Stated - PKR 588 - Datuk Dr. SYT)

FACTS

The Appellant applied for and was approved a piece of land by the State of Sabah for the purpose of starting a cocoa plantation. It was a condition of the approval that, inter alia, royalties, extraction charges and nett proceeds were to be paid on all timber removed from the licensed area. The nett proceeds were to be paid to the Forestry Department to be reimbursed to be Appellant for expenses incurred in agricultural development i.e. the cocoa plantation.

The Appellant claimed the nett proceeds paid to the Government as deductions in computing his taxable income from the timber operation. The Respondent disallowed the deductions and accordingly raised assessments for the years of assessments 1977 and 1978. The Appellant appealed against these assessments.

ARGUMENTS

The Appellant contended that the nett proceeds being payments required by the Government are fully deductible under Section 33 of the Income Tax Act 1967. Since the deductions are not specifically limited or prohibited by section 39 of the Act, they should be fully deductible. If the concept of capital expenditure is to be injected, then the entire income of timber proceeds should also be regarded as capital.

The Respondent contended that the nett proceeds payments were not connected with the timber operation. They were not wholly and exclusively incurred in the production of income from that source. Alternatively they were sums employed or intended to be employed as capital. In the further alternative, the grants or reimbursements received were income in nature and taxable under section 4(f) of the Act.

DECISION

The Special Commissioners decided that the nett proceeds paid were not deductible in computing taxable income from the timber operation. The fact that a payment is made pursuant to a condition in a license does not automatically render the payment an allowable expense. They may be regarded as an application of profits after those profits have been earned. In addition, the payments made give rise to a corresponding asset in the form of the State Government's obligation to repay the Appellant.

The appeal was therefore dismissed and the assessments confirmed.

Incomplete Records and Non-Disclosure
(Summary of Case Stated-PKR 631-S a/l K)

FACTS

The Appellant commenced business as a sole proprietor repairing electrical appliances on 1 February 1979. The following year, he also started selling electrical appliances. He did not report the income of his business to the Respondent. The Respondent raided the Appellant's business in 1988 and in the process of investigation, the Appellant directed his accountants to put up annual accounts for his business from 1979 to 1987. As the records were not complete, the accounts were estimated. The Appellant did not disclose the existence of a record of a particular bank account (Exhibit P3) to his accountants or to the Respondent. However, during the appeal he claimed that Exhibit P3 contained a record of his business payments and receipts. Several entries on Exhibit P3 had been erased and rewritten upon but no explanations were offered for these. The Appellant claimed that he had received several loans from his brother but no such loans were shown on his "Capital Statement" delivered to the Respondent. The Appellant had also registered a partnership with another individual on 22 September 1987.

The Respondent issued Notices of Assessment for the years of assessment 1980 to 1988 on 29 June 1992. The Appellant appealed against the assessments for the years of assessment 1984, 1987 and 1988.

ARGUMENTS

The Appellant contended that the assessments were excessive because amounts that had been treated by the Respondent as income from other sources were in fact bank lodgements from relatives and contra transactions with business associates. In respect of the year of assessment 1988, he contended that he had ceased business as a sole proprietor and had entered into a partnership on 22 September 1987.

The Respondent contended that the assessments were correct as Exhibit P3 was suspect. The "Capital Statement" submitted did not indicate that there was any loan to anyone. Moreover, an analysis of Exhibit P3 was submitted only in respect of one year ignoring the other relevant years and also the bank statements.

The Respondent also contended that there was no partnership as the "partner" was not called to prove that he was a partner. There was also no record of any contractual relationship between the Appellant and the "partner".

DECISION

The Special Commissioners decided that Exhibit P3 was not reliable as it contained continuous erasures which were unexplained. Moreover the existence of that account was never disclosed to the accountants or the Respondent. In respect of loans purportedly received from the brother, there is no record of such loans and neither were they indicated on the "Capital Statement" submitted by the Appellant to the Respondent. The Appellant therefore failed to show that the additional estimate is not income from other sources.

On the existence of a partnership from 22 September 1987, the Special Commissioners decided that the certificate of registration is prima facie and strong evidence of a partnership. The declaration of partnership was not challenged by the Respondent. Therefore a partnership did exist from 22 September 1987 to 31 December 1987.

The assessments for the years of assessment 1984 and 1987 were confirmed but that for the year of assessment 1988 should be amended to exclude the partner's share of profits.

Sale of Property - RPGT or Income Tax
(Summary of Case Stated - PKR 660 - MRP Sdn Bhd)

FACTS

MRP Sdn Bhd, which had a paid-up capital of RM2 acquired 6 contiguous pieces of land for about RM19 million in 1984. The purchase was financed partly through a long-term loan from a bank and the balance by the Appellant's holding company. In the accounts, the asset was classified as "Property Development Project". In April 1985, the Appellant applied for conversion of land use from "Agriculture" to "Housing" for 12 pieces of land (including the six pieces mentioned earlier). The Appellant withdrew this application in February 1986 because the Government had designated the relevant area as a "green lung". A week later another application was submitted for conversion of land use from "Agriculture" to "Golf Course and Club House" in respect of the six pieces of land. Planning for the proposed golf course went on in 1986 and several professional firms were engaged for the purpose. The application for conversion of land use was approved in March 1989. The Appellant did not commence any physical development as it did not have enough funds to develop the golf course. In the meantime, banks and creditors started to sue the company. In August, 1990, the Appellant sold the land to another company for about RM29 million.

With the sale proceeds the Appellant repaid the bank loan and used part of the proceeds to reduce debts owed to the holding company and other creditors.

On 2 May 1992, the Respondent raised an assessment to real property gains tax of about RM1.1 million on the disposal of the land. Subsequently, the Respondent informed the Appellant that the transaction should be subject to income tax instead and raised an assessment to income tax on 9 August 1993 for the year of assessment 1991 in the sum of about RM4.2 million.

ARGUMENTS

The Appellant contended that the assessment to income tax was in law null and void because it was inconsistent with an earlier assessment to real property gains tax which had been settled. The Appellant had intended to carry on a separate business of providing recreation and leisure and the land was therefore a capital asset. The sale was the sale of an investment. The land was sold not in the ordinary course of business but under conditions of financial stringency and financial duress.

The Respondent contended that the sale proceeds constituted income which was subject to income tax under section 4(a) of the Act.

DECISION

The Special Commissioners decided that the Respondent is not precluded from proceeding with an assessment under the Income Tax Act 1967 after reviewing the earlier assessment made under the Real Property Gains Tax Act 1967. Although it is not open to the Revenue to subject a taxpayer to two different charges to tax in respect of the same receipts, it is manifestly patent that the question of double taxation does not arise. If the gain arising from the sale of an asset is found to be of an income nature, then the assessment issued in respect of it as a capital gain is a nullity.

On the question of whether the sale proceeds constitute income or capital, the Special Commissioners decided that the Appellant was a property developer and dealer in land and that the disposal of the land was a normal incident in their business activity.

The initial application for conversion of the land for housing use was indicative of a trading motive. The Appellant failed to adduce evidence that the original intention had changed. The purchase of the land was financed entirely by borrowed funds and the property did not appear as a long term investment under the Fixed Assets column of the Appellant's accounts. The property was also located in a strategic area with great potential for development. The Appellant also conceded that it had sold other pieces of land on which it had paid income tax and real property gains tax. Finally, the sale of an asset under threat of foreclosure proceedings or any other economic sanction does not alter its character in any way.

The appeal was therefore dismissed and the assessment confirmed.

NOTICE TO ALL REGISTERED STUDENTS OF THE MIT PROFESSIONAL EXAMINATIONS DECEMBER 1996

Registered Students wishing to sit for the MIT Professional Examinations in December 1996, please return your Examination Entry Form and payment to the MIT Examination Department by **15 November 1996**.

Please ensure that all outstanding dues to the Institute have been settled prior to examination date.

You need to produce your Student Identification Card during the examinations. If you have not receive your card, please submit two passport size photograph with your name and registration number to the Examination Department.

The Council has issued a booklet on "Rules and Regulations (On Professional Conduct and Ethics)" in 1995. A copy of the booklet has been sent to all students. If you have not received your copy, please contact us. Please note that professional Ethics is a topic included in the syllabus of the Examinations of the Intitute.

For further enquiries, please contact Ms Marian / Ms Suja at 03-2745055.

MIT, Examination Department,
Level 3, Dewan Akauntan,
No.2, Jalan Tun Sambanthan 3,
Brickfields,
50470 Kuala Lumpur.

NEW BOOKS IN LIBRARY

1. John R. Levine.
   Internet for Dummies.
   Chicago: IDG Books, 1995
2. **Malaysian and Singapore Tax Cases 1950 - 1985.**
   Singapore: CCH Asia Ltd, 1989.
3. **Bank Negara Malaysia: Annual Report 1995.**
   Kuala Lumpur: BNM, 1996.
4. **Australian Master Tax Guide.**
   North Ryde: CCH Australia Ltd. 1996.
5. **British Master Tax Guide 1995-96.**
   Oxford: CCH Edition Ltd. 1995.
6. Sheikh Ghazali Sheikh Abod, ed.
   An Introduction to Islamic Finance.
   Kuala Lumpur: Quill Publishers, 1992
7. **Towards a just Monetary System.**
   Leicester: The Islamic Foundation, 1985.

EXPORT OF PRESCRIBED SERVICES - SERVICE TAX IMPLICATIONS

By Low Chee Cheong

When service tax was first extended to prescribed professional establishments with effect from I January 1983, discussions and dialogues with the Royal Customs and Excise Department ("Customs Department") indicated that the liability to service tax depended on the location where the prescribed services were ultimately "consumed". Accordingly, prescribed services provided in Malaysia by prescribed professional establishments to overseas clients were not subject to service tax as the prescribed services werc regarded as services exported for overseas consumption ('export of services').

It followed that prescribed services provided to overseas clients for enquiries originated from overseas (e.g, tax advisory work) had also been accepted by the Customs Department as "export of services" and therefore not subject to service tax.

The above spirit was supported by the Customs Department's official publication, Service Tax Procedures (Customs Guide Book Series No.2 - S(1)), which stated that:

> *"Any prescribed services provided by any person from other parts of Malaysia to Langkawi, Labuan and Free Zone will be regarded as export and will not be liable to service tax. (Paragraph 2, Page 30)"*

> *"In order to encourage the export of services, any prescribed services which are exported will not be subject to service tax. (Paragraph 3.3, Page 32)"*

However, the Customs Department has since changed its interpretation of "export of services" and ruled that service tax was payable on prescribed services provided in Malaysia to Free Zone areas and to overseas clients for work originated from overseas.

The reason for the change was based entirely on the fact that the prescribed services were performed in the Principal Customs Area in Malaysia and thus not regarded as export of services.

The change in interpretation means that the Customs Department has shifted the incidence of service tax for such prescribed services, as far as export of services is concerned, from where they are originated or consumed ("consumption") to where they are physically provided or performed ("performance").

The shift is a departure from the official stand of the Customs Department as spelt out in its official publication referred to earlier.

The change in the Customs Department's stand has serious and far-reaching implications to both Malaysia's competitiveness in the services sector and member firms of the Institute.

In view of the above, the Institute on 12 July 1996 made a written representation to the Secretaty-General of the Ministry of Finance, Tan Sri Clifford Herbert, for a review of the Customs Department's current interpretation of the chargeability of the service tax on the export of services.

In response to the said written representation, the Customs Department invited the Institute's representatives, together with other bodies and associations, to a dialogue on export of services on 13 September 1996.

At the dialogue, the Customs Department clarified its current stand on service tax liability on the export of services by reiterating that the incidence of service tax for export of services should be based on "performance" rather than "consumption".

However, to improve the competitiveness of the services sector in order to promote the export of services, the Customs Department indicated its willingness to look forward to the future and change its current stand of subjecting export of services to service tax.

As a starting point, the Customs Department sought to define "export of services" by seeking the views of those present at the dialogue ("the participants") on what type of professional services pro-

vided by the prescribed professional establishment was capable of being exported.

After lengthy deliberations the Custom's Department agreed to consider the view along the line that all professional services can be exported except those relating to land situated in Malaysia.

Next, the Customs Department sought assurance that adequate controls and documentation would be in place to ensure that "export of services" would not be abused by the prescribed professional establishments through the deliberate setting up of "ghost" companies overseas to avoid the payment of service tax.

The participants explained to the Customs Department that the potential savings on the 5% service tax would not justify the high cost of setting up and maintaining an overseas outfit. Furthermore, the service providers would not benefit from the savings on the service tax as the service tax was to be borne by the service recipients.

The participants also assured the Customs Department that, for big jobs involving substantial sum of money, there would be adequate documentation in the forms of contracts and agreements.

After much discussion on the documentation requirements, the Customs Department agreed to accept that, for transactions involving no third party (i.e. direct dealings between service provider and recipient), the invoices raised for the transactions would be regarded as sufficient documentations. However, the Customs Department stated that it reserved the right to request further documentation if necessary.

While the Customs Department's decisions on the proposed definition of export of services and required documentation were acceptable to the participants, one issue remained unresolved.

The unresolved issue concerned the treatment of service tax liability on past export of services that has not been subject to service tax.

The Institute is currently appealing to the relevant authorities on this issue.

Refund/Off-Set Of Service Tax Paid And Application Of Service Tax To Export Of Services

The Institute has been alerted by a number of our members on the problems encountered regarding the above two subject matters and are therefore appealing for the current practices adopted by the Royal Customs and Excise Department Malaysia ("Customs Department") to be reviewed.

In response to the Institute's appeal, the Ministry of Finance has recently extended the time limit for payment of service tax for invoices issued on or after 20 July 1995 where payments have not been received from 6 months to 12 months.

However, prior to the announcement of the above extension, some MIT members have paid their service tax liability on expiration of six months after the issue of invoices on or after 20 July 1995.

Due to the above extension, these payments are technically not due until the expiration of twelve months from the dates of issue of invoices.

We understand that Customs Department have taken the position that requests for offset or refund on these payments which are not yet due to the Customs Department, will not be entertained. The Institute is therefore apealing that the Customs Department's position be reviewed so that these overpayments be either refunded or be allowed to be utilised to set off future service tax liabilities.

Page 31 of the Customs Department's Publication, Service Tax Procedures (Series No. 2-S(1)), states that "In order to encourage the export of services, any prescribed services which are exported will not be subject to service tax."

Further, prescribed services provided to overseas clients for enquiries originated from overseas (e.g. tax advisory work) have also been accepted by the Customs Department as export of services and therefore not liable to service tax.

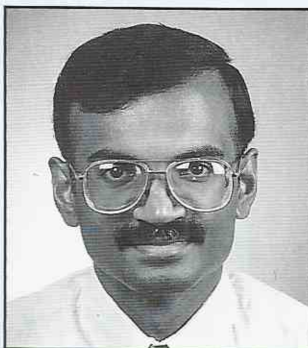
However, the Customs Department has now decided that service tax is payable on prescribed services provided to clients located in overseas for enquiries originated from overseas. This is clearly a departure from the previous stand of the Customs Department which was made known to the public through its above Publication.

Again, the Institute is appealing for the current interpretation of the scope of service tax towards the provision of prescribed services to overseas clients for enquiries originated from overseas be reviewed.

MEET YOUR NEW COUNCIL MEMBER

Mr Thanneermalai s/o SP SM Somasundaram joined the Council of the Institute on 29 June 1996. He was admitted as an associate member on 5 June 1992. He is also a member of the Malaysian Institute of Accountants (MIA) and the Institute of Chartered Accountants in England & Wales (ICAEW). Currently, he holds the position as an Executive Director at Price Waterhouse.

Following his appointment as a Council Member, an interview was conducted to introduce him to the members of the Institute. Some of the questions forwarded to him are as follows:



Q: Firstly, being a new member of the Council, could you tell us more about yourself?

A: I have been working in the tax arena in the last 17 years. My working experience also includes an 18 months spell with an oil services company, Schlumberger, covering the Asia Pacific Region from Singapore. My principal activity and hobby is one and only... working to solve my clients' tax problems.

Q: You have been a member since 1992. What do you think of the Institute's progress in terms of its contribution to the tax profession and provision of services to its members? Also, if the Institute has fallen short of its objectives mentioned above, what more could the Institute have done?

A: I am reasonably happy with the progress the Institute has made so far. However, I would like the Institute's presence to be felt to a greater degree by the business community. Currently, I believe the business community is perhaps not fully aware of the role we are currently playing or capable of doing in the future. For example, if a particular industry has a generic tax problem, I am not sure if their first port of call will be the MIT. I tend to believe that in such circumstances, they tend to use their own industry associations or.. some other bodies to approach the government authorities. In my opinion, on tax related matters... MIT should figure as the first organisation any business or industrial group would want to refer their tax problem to.

Q: As a Council Member, how can you contribute to the development of the Institute?

A: I certainly will contribute by being a member of various committees of the Institute. I also intend to actively participate in the Council meetings... especially in terms of contributing ideas towards the growth of our Institute.

Q: As you know, a strong membership forms a strong foundation for the growth and development of an Institute like MIT. How do you think the Institute can enjoy a fast-rising membership?

A: What I said in answer to your second question would be of relevance here. If business enterprises consider us in a high esteem, naturally, their employees are likely to also provide us with similar respect and consequently, such employees are also likely to become our members which in turn will definitely contribute to the increase in our membership...

As far as the tax practitioners fraternity is concerned, in order to increase the membership, we need to show through our actions that we are a highly specialised body, respected not only by business enterprises... but also by the Government.

Q: As you are aware of, the Institute is currently working on the recognition as a national taxation body. What would you consider as the best course for the Institute to take in order to gain the recognition?

A: In order to become a national taxation body, we have to constantly market our specialist knowledge and be acknowledged by the recipients (Government, business enterprises and the academic community). Furthermore, regular publications on our specialist area and perhaps... we should also venture into providing publicly our comments to draft legislations or to act as a sounding body to both Government and the tax payers as a whole.

Q: How do you foresee the future of the Institute?

A: Although we have an uphill battle in obtaining the recognition as the foremost authority on taxation matters, I believe that if we can market ourselves frequently and uphold our reputation and quality in the right forum, the Institute's growth should spiral in the near future.

Q: Lastly, would you like to say something to the members of the Institute?

A: In order to develop the taxation speciality to stand on its own in the market place, we as members of MIT must maintain the utmost professionalism and sincerity in our work.

CONFERENCE ON CUSTOMS AND INDIRECT TAX

The Deputy Finance Minister, YB Dato' Wong See Wah officiated the National Customs and Indirect Taxation Conference on August 7, 1996. The conference was jointly organised by the Malaysian Institute of Accountants (MIA) and the Malaysian Institute of Taxation (MIT), in collaboration with Majlis Sukan Kebajikan Kastam (Customs)

The Conference with an aim to provide hands-on practical updates and to assist participants in resolving any gray areas relating to the customs and indirect taxation matters, had speakers from Customs & Excise Department, MIDA and Coopers & Lybrand.

Dato' Wong See Wah in his opening speech, highlighted the objective of introducing a comprehensive indirect tax on consumption i.e., to provide a stable source of revenue which would be less sensitive to economic fluctuations than direct tax.

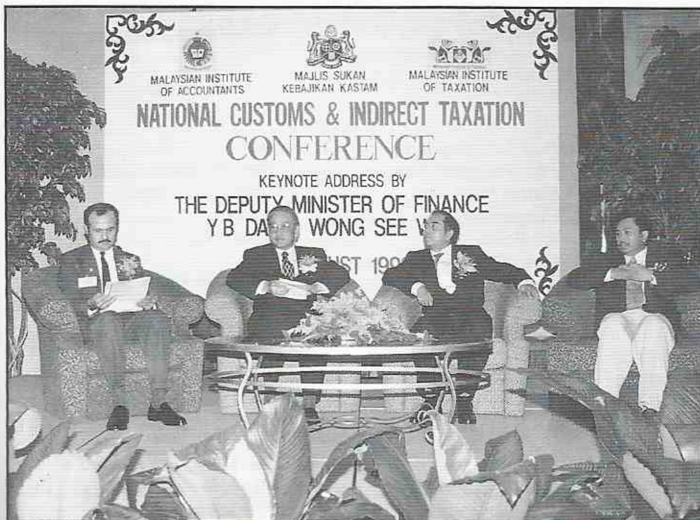
He further reported that the revenue from indirect taxes is estimated to register an increase of about 15.6 per cent this year while import duties revenue is expected to increase by 16 per cent. Similarly, the collection from excise duties and sales tax are estimated to increase by 15.5 per cent and 19.1 per cent, respectively. He added that increasing consumption is expected to contribute a significant increase of 22.7 per cent in service tax.

He commended the organisers for the efforts taken in educating the public in the relevant areas of expertise and further urged other Government Departments to follow the Customs Department in doing so.

The President of MIT, En Ahmad Mustapha Ghazali, in his speech gave assurance that the Institute will stand by the Government to do its part as one of the professional intermediaries responsible to produce a pool of qualified personnel of integrity with excellent competency in technical skills and expertise in the taxation field.

Meanwhile, MIA Council Member, Encik Jeremy Nasrulhaq who delivered the speech on behalf of the MIA President, Dato' Hanifah Noordin, informed that the MIA, in recognising the significant roles played by the tax professionals, had sponsored the establishment of the MIT in 1991.

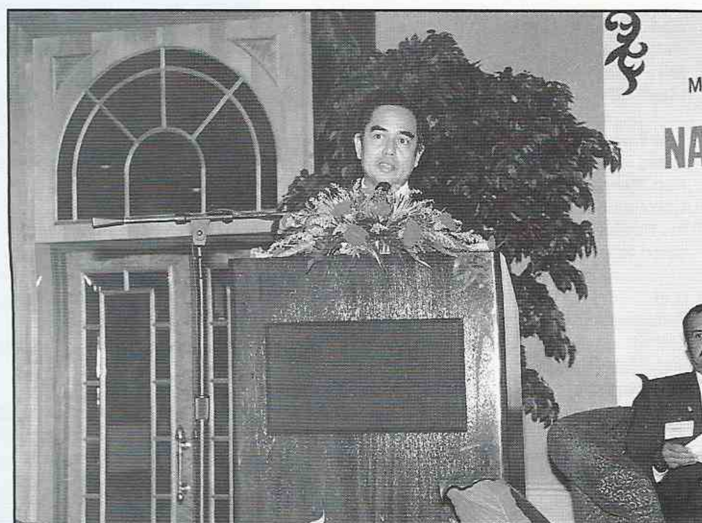
He also congratulated the MIT on being invited to be a member of the Asia Oceania Tax Consultants Association (AOTCA) which is based in Tokyo, Japan and the MIT President, Encik Ahmad Mustapha Ghazali on his appointment as a Vice-President of the said association.



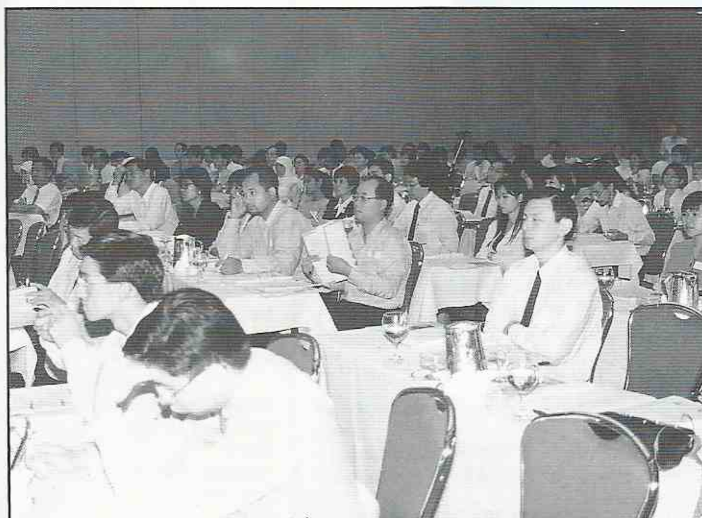
One for the album... (from left) MIA Council member, En Jeremy Nasrulhaq, YB Dato' Wong See Wah, MIT President, En Ahmad Mustapha Ghazali, Tn. Hj. Ahmad Padzli Mohyiddin.

YB Dato' Wong See Wah striking the gong. The Conference begins...

Arrival of YB Dato' Wong See Wah. On his right is MIT Vice President, Mr Chow Kee Kaa.



En Ahmad Mustapha Ghazali delivering his speech.



A cross-section of the participants.

En Ahmad Mustapha Ghazali presenting a souvenier to YB Dato' Wong See Wah whilst En Jeremy Nasrulhaq (seated) looks on.

ROYAL CUSTOMS AND EXCISE DEPARTMENT TRANSFER OF SENIOR OFFICERS
(With effect from 15 August 1996)

Syed Yusoff Fadzil bin Syed Sailudin
(Dari)
Penolong Kanan Pengarah Kastam, Cukai Dalaman, Selangor.
(Gred W2)

(Ke)
Penolong Kanan, Pengarah Kastam
Cukai Jualan,
Ibu Pejabat
(Gred W2)

Roslan bin Yusof
(Dari)
Pen. Pengarah Kastam, LTSAAS, Subang (Kargo), W.Persekutuan.
(Gred W3)

(Ke)
Penolong Kanan, Pengarah Kastam
Cawangan Pengurusan Penjenisan,
Ibu Pejabat.
(Mem. Gred W2)

Tan Kwong Jin
(Dari)
Pen. Pengarah Kastam, Cawangan Risikan, Ibu Pejabat.
(Gred W3)

(Ke)
Penolong Kanan, Pengarah Kastam
Bhg. Cukai Dalaman
W.Persekutuan
(Mem. Gred W2)

Md. Salleh bin Said
Pen. Pengarah Kastam
Caw. Penggudangan, Selangor.
(Gred W3)

(Ke)
Penolong Kanan, Pengarah Kastam
Cukai Dalaman
Selangor
(Gred W3)
(Penempatan secara pentadbiran)

Khariul Anwar bin Mohd. Yusof
(Dari)
Penolong Pengarah Kastam, Caw. Pentadbiran Am
Ibu Pejabat.
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Pejabat KPK
Ibu Pejabat
(Gred W3)

Azis bin Yacub
(Dari)
Pen. Pengarah Kastam
Pejabat KPK,
Ibu Pejabat.
(Gred W3)

(Ke)
Pen. Pengarah Kastam,
Caw. Pentadbiran Am
Ibu Pejabat
(Gred W3)

Gor Kim Siang @ Goh Kin Siang
(Dari)
Pen. Pengarah Kastam
Kuantan, Pahang
(Gred W3)

(Ke)
Pen. Pengarah Kastam
AKMAL,
Melaka
(Gred W3)

Abu Hasan bin Jasin
(Dari)
Pen. Pengarah Kastam
Caw. Perjawatan
Ibu Pejabat
(Gred W3)

(Ke)
Pen. Pengarah Kastam
AKMAL,
Melaka
(Gred W3)

Yusof bin Abd Majid
(Dari)
Pen. Pengarah Kastam
Pencegahan,
Kuantan
Pahang
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Cawangan Siasatan,
Johor Bahru
(Gred W3)

Ali bin Ibrahim
(Dari)
Pen Pengarah Kastam
Cawangan Siasatan
Johor Bahru
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Pencegahan
Kuantan
Pahang
(Gred W3)

Theresa Cheah Siew Lin
(Dari)
Pen. Pengarah Kastam
Cawangan Pendakwaan
Pulau Pinang
(Gred W3)

(Ke)
Pen. Pengarah Kastam,
Caw. Penyelarasan Tindakan
Pulau Pinang
(Gred W3)

Mohd. Shokri bin Yahya
(Dari)
Pen. Pengarah Kastam
Cawangan Penyelarasan Tindakan
Pulau Pinang
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Cawangan Pendakwaan
Pulau Pinang
(Gred W3)

Karuppiah a/l Muthu
(Dari)
Pen Pengarah Kastam
Caw. Kawalan Pungutan

W.Persekutuan
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Cawangan Skrutini,
W.Persekutuan
(Gred W3)

Chin Jek Bin @ Chen Jek Bin
(Dari)
Pen. Pengarah Kastam
Cawangan Skrutini
W.Persekutuan
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Caw. Kawalan Pungutan,
W.Persekutuan
(Gred W3)

Hamidon bin Isa
(Dari)
Pen. Pengarah Kastam
Tawau
Sabah
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Cawangan Penggudangan,
Selangor
(Gred W3)

Zal Hii Seng Tieng
(Dari)
Pen. Pengarah Kastam
Miri
Sarawak
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Cawangan Pendakwaan
Kuching
Sarawak
(Gred W3)

Durahim bin Tutin
(Dari)
Pen. Pengarah Kastam
Caw. Perindustrian
Ibu Pejabat
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Cawangan Import/Export
Ibu Pejabat.
(Gred W3)
(Mulai 1.6.1996)

Rosinah binti Ali
(Dari)
Penguasa Kastam
(Jawatan Kumpulan)
Ibu Pejabat
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Sistem Maklumat
Pengurusan
Ibu Pejabat
(Gred W3)

Wan Din bin Wan Hassan
(Dari)
Penguasa Kastam
W.Persekutuan
(Gred w3)

(Ke)
Pen. Pengarah Kastam
Pengurusan
Penjenisan
Ibu Peiabat
(Gred W3)

Rasali bin Manat
(Dari)
Penguasa Kastam
Caw. Cukai Jualan,
Ibu Pejabat (Gred W3)

(Ke)
Pen. Pengarah Kastam
Pengurusan
Penjenisan
Ibu Pejabat
(Gred W3)

Azizah binti Ibrahim
(Dari)
Penguasa Kastam,
Peng. Penilaian,
Ibu Pejabat.
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Caw. Kajian dan
Perancangan Korporat
Ibu Pejabat
(Gred W3)

Mohd. Amin bin Mahmod
(Dari)
Penguasa Kastam
Pengurusan Sokongan
Selangor
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Caw. Penguatkuasa
Pelesenan, Selangor
(Gred W3)

Ab. Hamid bin salleh
(Dari)
Penguasa Kastam
W.Persekutuan
(Gred W3)

(Ke)
Pen. Pengarah Kastam
LTASAAS (Kargo),
Subang,
W.Persekutuan
(Gred W3)

Saadudin bin Othman
(Dari)
Penguasa Kastam
Johor Bahru,
Johor
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Cawangan Eksport
Johor
(Gred W3)

Kaneson a/l Karupaih
(Dari)
Penguasa Kastam
Cawangan Import,
Johor Bahru.
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Kawalan Pelesenan dan
Pungutan,
Kuantan
Pahang
(Gred W3)

Ahmad Mustafa bin Mohd. Ali
(Dari)
Penguasa Kastam
Caw. Latihan dan
Pembangunan Tenaga Manusia,
Ibu Pejabat
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Cawangan Perjawatan
Ibu Pejabat
(Gred W3)

Lamit bin Haji Sulaiman
(Dari)
Penguasa Kastam
Tawau
Sabah (Gred W3)

(Ke)
Pen. Pengarah Kastam
Tawau
Sabah
(Gred W3)

Supomo bin Yusuf
(Dari)
Penguasa Kastam

(Ke)
Pen. Pengarah Kastam
Cawangan Pendakwaan

Hasimah binti Semuli
(Dari)
Penguasa Kastam
Miri,
Sarawak
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Miri,
Sarawak
(Gred W3)

Ahmad Zainuddin bin Drahman
(Dari)
Penguasa Kastam
Caw. Pem. Akaun,
Kuching,
Sarawak
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Pengurusan Kewangan,
Kuching,
Sarawak
(Gred W3)

Willibroad Lim
(Dari)
Penguasa Kastam
Kota Kinabalu,
Sabah
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Perakaunan Hasil,
Kota Kinabalu,
Sabah.
(Gred W3)

Wan Leng Whatt
(Dari)
Penguasa Kastam
Unit Khas Cukai
Jualan/Perkhidmatan,
Ibu Pejabat
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Unit Khas Cukai
Jualan/Perkhidmatan,
Ibu Pejabat
(Gred W3) (Mulai 2.9.96)

Hussin bin Ishak
(Dari)
Penguasa Kastam
Cawangan Risikan,
Ibu Pejabat
(Gred W3)

(Ke)
Pen. Pengarah Kastam
Cawangan Risikan,
Ibu Pejabat
(Gred W3)

Engku Mat Aris bin Engku Setia
(Dari)
Penguasa Kastam
Kemaman,
Terengganu (Gred W3)

(Ke)
Penguasa Kastam
Port Dickson,
Negeri Sembilan (Gred W3)

Azemi bin Taib
(Dari)
Penguasa Kastam,
Kota Bahru,
Kelantan
(Gred W3)

(Ke)
Penguasa Kastam
Selangor
(Gred W3)

Abd. Wahab bin Ahmad
(Dari)
Penguasa Kastam,
Kulim
Kedah
(Gred W3)

(Ke)
Penguasa Kastam,
Selangor
(Gred W3)

Kassim bin Ahmad Kamel
(Dari)
Penguasa Kastam, PCKP,
Singapura. (Gred W3)

(Ke)
Penguasa Kastam,
Selangor (Gred W3)

Abu Bakar bin Sulaiman
(Dari)
Penguasa Kastam,
Kerteh,
Terengganu.
(Gred W3)

(Ke)
Penguasa Kastam,
Selangor
(Gred W3)

Mohd. Shahar bin Khalil
(Dari)
Penguas Kastam,
Ipoh,
Perak
(Gred W3)

(Ke)
Penguasa Kastam,
Selangor
(Gred W3)

Ahmad Samawe bin Haji Hassan
(Dari)
Penguasa Kastam,
Kuantan .
Pahang (Gred W3)

(Ke)
Penguasa Kastam,
Selangor (Gred W3}

Noliyah binti Sahad
(Dari)
Penguasa Kastam,
Kuantan,
Pahang (Gred W3)

(Ke)
Penguasa Kastam,
Selangor (Gred W3)

Yusri bin Abd. Jalil
(Dari)
Peuguasa Kastam,
Kuching,
Sarawak (Gred W3)

(Ke)
Penguasa Kastam,
Kertih,
Terenggaan (Gred W3)

Gan Tiong Lian
(Dari)
Penguasa Kastam
Port Dickson,
Negeri Sembilan (Gred W3)

(Ke)
Penguasa Kastam,
Kemaman
Terengganu (Gred W3)

Nor Ashikin binti Othman
(Dari)
Penguasa Kastam,
Selangor (Gred W3)

(Ke)
Penguasa Kastam,
Taiping,
Perak (Gred W3)

Mahni binti Yahya
(Dari)
Penguasa Kastam
W. Persekutuan (Gred W3)

(Ke)
Penguasa Kastam,
Ipoh
Perak (Gred W3)

Radzi bin Harun
(Dari)
Penguasa Kastam,
W. Persekutuan (Gred W3}

(Ke)
Penguasa Kastam,
Ipoh,
Perak (Gred W3)

Hazman bin Ahmad
(Dari)
Penguasa Kastam,
Ipoh,
Perak (Gred W3)

(Ke)
Penguasa Kastam,
W.Persekutuan (Gred W3)

Youp bin Awang
(Dari)
Penguasa Kastam,
Johor Bahru,
Johor (Gred W3)

(Ke)
Penguasa Kastam,
Batu Pahat,
Johor (Gred W3)

Dasima binti Daud
(Dari)
Penguasa Kastam,
Johor Bahru,
Johor (Gred W3)

(Ke)
Penguasa Kastam,
Batu Pahat,
Johor (Gred w3)

Abd. Manap bin Abd. Rahman
(Dari)
Penguasa Kastam,
Pencegahan,
Johor Bahru (Gred W3}

(Ke)
Penguasa Kastam,
Pencegahan,
Batu Pahat,
Johor (Gred W3)

Safee bin Awang
(Dari)
Penguasa Kastam,
Johor Bahru,
Johor (Gred W3)

(Ke)
Penguasa Kastam,
W.Persekutuan (Gred W3)

Lim Chye Gaik
(Dari)
Penguasa Kastam,
Sistem Maklumat,
Pengurusan,
Ibu Pejabat (Gred w3)

(Ke)
Penguasa Kastam,
Ipoh,
Perak. (Gred W3)

Rita a/p L.Paul
(Dari)
Penguasa Kastam,
Johor Bahru,
Johor (Gred W3)

(Ke)
Penguasa Kastam,
Sistem Maklumat
Pengurusan,
Ibu Pejabat (Gred W3)

Rabiah binti Hitam
(Dari)
Penguasa Kastam,
Peng. Penilaian,
Ibu Pejabat (Gred W3)

(Ke)
Penguasa Kastam, Kuantan,
Pahang (Gred W3)

Razali bin Hashim
(Dari)
Penguasa Kastam
Caw. Perkhidmatan
Ibu Pejabat (Gred W3)

(Ke)
Penguasa Kastam,
(Jawatan Kumpulan),
Ibu Pejabat (Gred W3)
(Mulai 1.3.96)

Roslan bin Md. Yassin
(Dari)
Penguasa Kastam,
(Jawatan Kumpulan),
Ibu Pejabat (Gred W3)

(Ke)
Penguasa Kastam,
Caw. Peng. Penjenisan,
Ibu Pejabat (Gred W3)

Fozian bin Ismail
(Dari)
Penguasa Kastam,
(Jawatan Kumpulan),
Ibu Pejabat (Gred W3)

(Ke)
Penguasa Kastam,
Caw. Perkhidmatan,
Ibu Pejabat (Gred W3)
(Mulai 22.5.96)

Rosland Phang Onn Ghee
(Dari)
Penguasa Kastam,
Caw. Peng. Perolehan,
Ibu Pejabat (Gred W3)

(Ke)
Penguasa Kastam,
Caw. Cukai Jualan,
Ibu Peiabat (Gred W3)

Zaidah binti Mohd. Nor
(Dari)
Penguasa Kastam,
(Jawatan Kumpulan),
Ibu Pejabat (Gred W3)

(Ke)
Penguasa Kastam,
Unit Perhubungan Awam,
Ibu Pejabat (Gred W3)

Sudin bin Zakaria
(Dari)
Penguasa Kastam,
Taiping,
Perak (Gred W3)

(Ke)
Penguasa Kastam,
Selangor (Gred W3)

Zameri bin Ibrahim
(Dari)
Penguasa Kastam,
Pencegahan,
Selangor (Gred W3)

(Ke)
Penguasa Kastam,
Caw. Peng. Perolehan,
Ibu Peiabat (Gred W3}

Najmunuddin bin Zaladin
(Dari)
Penguasa Kastam,
W.Persekutuan (Gred W3)

(Ke)
Penguasa Kastam,
Caw. Peng. Penilaian,
Ibu Pejabat (Gred W3)

Assan bin Mohamad
(Dari)
Penguasa Kastam
Perindustrian
Kuching,
Sarawak (Gred W3)

(Ke)
Penguasa Kastam
(Pencegahan)
Bintulu
Sawarak (Gred W3)

Tan Seng San
(Dari)
Penguasa Kastam
AKMAL,
Melaka (Gred W3)

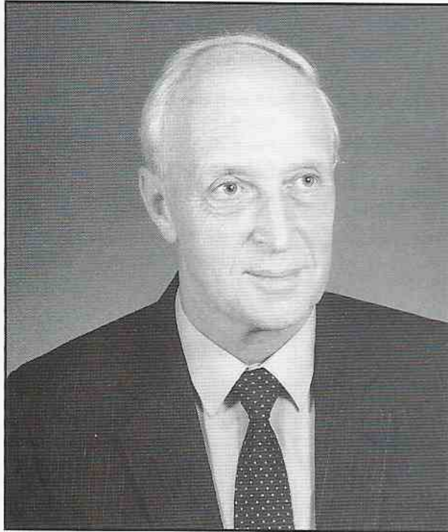
(Ke)
Penguasa Kastam
Cawangan Latihan dan
Pembangunan Tenaga
Manusia
Ibu Pejabat (Gred W3)

Moh. Jaafar bin Mohd Yusuf
(Dari)
Pen. Kanan Pengarah
Kastam
Cawangan Pengurusan
Penjenisan
Ibu Pejabat (Gred W2)

(Ke)
Pen. Kanan Pengarah
Kastam
Pelabuhan Barat Selangor
(Gred W3)

Md. Ali bin Desa
(Dari)
Penguasa Kastam
Seberang Perai
Pulau Pinang (Gred W3)

(Ke)
Pen. Pengarah Kastam
Pelabuhan Utara (NBCT)
Pulau Pinang (Gred W3)



INCOME TAX AND THE FOUR "W"s (SCOPE AND BASIS OF CHARGE)

Prepared by:
Richard Thornton

THE NATURE OF TAXES

From early times governments have raised taxes to pay for the cost of their programmes. Often, the need for money has been most urgent when wars had to be fought, but in more settled times, taxes are still necessary. Today in Malaysia we live in peace, but the Government must have money to pay for administration, social programmes and infrastructure development.

Throughout the World, many different kinds of taxes have been tried, such as capital gains tax, death duty, poll tax and even a tax on windows, but it is well recognised that a system of income taxation is probably the fairest method and today most countries rely upon income tax as the basis of their taxing system.

INCOME TAX AND THE LAW

The need for raising taxes is implied in stating one of the fundamental rights of the citizen under the Malaysian Constitution - "No person shall be deprived of property save in accordance with law" (Article 13(1)). Of course, any system of taxation will only be as fair as the rules by which it is administered and the strict adherence to those rules by both the administrators and the taxpayer. In Malaysia, detailed rules are covered by the law in force.

Income Tax was first introduced into the Federation of Malaya in 1947 in the form of the Income Tax Ordinance 1947. Eventually, this was replaced by the present law, the Income Tax Act 1967 ("the Act"), at the same time as the repeal of the separate Ordinances which applied to Sabah and Sarawak.

In order to have a full understanding of the income tax law as it applies in Malaysia today, we need to look not only at the Act but also at the subsidiary legislation such as the various Rules, Regulations and Orders made under the authority of the Act.

However detailed the law, there will always be situations in which it's application is not clear and the Act provides for an appeals procedure to resolve such difficulties. The result of an appeal will be a decision as to how a particular part of the law is to be interpreted. This takes the form of a Deciding Order made by the Special Commissioners or a Judgment made by a court of higher authority. To know the law of income tax also requires a study of these decisions. Interpretations are also made by the Inland Revenue and sometimes these are made available in the form of guidelines. It is necessary to know about them because they are usually followed in practice, but it should be remembered that they cannot supersede the law as interpreted on appeal.

CERTAINTY OF LAW

A good law must be as clear and certain as possible. It must set out unambiguously the scope and basis of the tax in key areas, in other words the four W's.

WHO **WHAT**
WHERE **WHEN**

All of these are covered in s.3 of the Act, the basic charging section, which states that "a tax to be known as income tax shall be charged for each *year of assessment* upon the *income* of any *person* accruing in or derived from *Malaysia* or received in Malaysia from outside Malaysia"

WHO?

"Any person" are the words used. Without further explanation, this could be taken to mean just a natural person, an individual, but the Act takes the trouble to tell us that "person" includes a company, a body of persons and a corporation sole (s.2(1)). Notice the use of the word "includes". From this we can imply that the tax covers everybody and every organisation. Most of the rules set out in the Act apply to all taxpayers but there are some variations and these have been covered in earlier articles in this series.

WHAT?

The word used is "income". Perhaps we have a good idea of what we mean by income. If not, the Act does not help because it does not contain any definition. The question of what is income has been considered by the courts overseas and in one case (CIT v. Shaw Wallace (6 ITC 178)) the judge referred to "a periodical monetary return coming in with some sort of regularity, from a definite source........excluding anything in the nature of a mere windfall". He likened it to a tree which produces a fruit, where the tree represents capital and the fruit is the income it produces. From this we could probably get some sort of guide as to when a receipt is income:

- *when it is regular.* This is an indication but it is not conclusive because there are cases where something only comes in once, for example a salary from a temporary employment or an isolated transaction in the nature of trading
- *when it has a definite source.* The source or cause of the income might be capital invested or it might be the work or labour put in to generate the income.
- *when it is not a mere windfall.* A lucky win on the 4-digit numbers would not be income.
- *when it is not capital.* A sale of 'the tree' itself would be capital

WHERE?

If income has a source it must also have a geographical location. Most countries are not too concerned about this and will tax income arising abroad as well as in their own country, but Malaysia is a bit different. The territorial scope set out in s.3 covers:

Income accruing in or derived from Malaysia
This refers to any income having a source in Malaysia (defined for this purpose as including Malaysia's territorial waters and the extended zone of exploitation), regardless of whether it is actually received in Malaysia. In most cases it will be obvious when an income source is located in Malaysia but this by itself is not sufficient and the detailed rules set out in the Act must be consulted.

Income received in Malaysia from outside Malaysia.
This refers to income which has a foreign source. The exact meaning of the word "received", which is not defined by the Act, is a matter of controversy. It has not been considered by any Malaysian court so reliance must be placed on foreign decisions for guidance. What seems to emerge from these decisions is that the receipt does not have to be in cash, it excludes anything having a capital nature and it must be in the legal ownership of the taxpayer at the time of receipt in Malaysia (e.g a gift made abroad which the beneficiary remits to Malaysia is not income of the giver). A popular , but not necessarily conclusive, view is the "doctrine of first receipt" based on the decision of the Privy Council in an Indian case (Pondicherry Railway Co. Ltd. v CIT (5 ITC 363)). According to this view once an item of income has been received (overseas) by the person entitled to it, it cannot be received again (in Malaysia).

The received basis for foreign source income does not apply to income derived from the business of banking, insurance, shipping and air transport which is liable to tax whether received in Malaysia or not.

Exclusions and exemptions.

The following income is excluded from the charge under s.3:

- income from an offshore business activity carried on by an offshore company (s.3B). (This is a reference to Labuan which has it's own tax system applying to offshore business activity);
- foreign source income received in Malaysia by a resident company, other than one carrying on banking, insurance, shipping and air transport business. (s. 3C). (Dividends distributed from such income are exempted under (P.U. (A) 450)); and
- foreign income received in Malaysia by a non-resident (exempted under Schedule 6, para. 28).

WHEN IS IT TO BE TAXED?

Income tax shall be charged "for each year of assessment". Unless some period of time is fixed for the measurement of income, it would be impossible to calculate the tax. A year of assessment is defined as the calendar year but, in general, the assessment is based on the income of the preceding calendar year (the preceding year basis).

CATEGORIES OF INCOME

Different rules apply to the different types of income and the Act, in s.4, sets out six broad categories

(a) gains or profits from a business, for whatever period of time carried on;

(b) gains or profits from an employment;

(c) dividends; interest or discounts;

(d) rents, royalties or premium;

(e) pensions, annuities or other periodical payments not falling within any of the previous headings;

(f) gains or profits not falling within any of the previous headings.

In addition to the general categories of income udner s. 4, there are two other tyeps of income which are brought into charge to income tax by deeming provisions:

- special clases of income (s. 4A), and

- deemed income in respect of the occupation of premises for non-business purpose (s. 11).

Each of these categories of income, which will be examined in later articles, has it' own special features dealing with the four W's as well was with the rules of computation. For this reason, it is important to be able to identify the right catetgory for any particular type of income, particularly where the answer is not quite obvious.

The relationship between the different categories of income is s. 4 was examined by the Privy Council in the case of American Leaf Blending Co. Sdn. Bhd. v DGIR [(1979) 1 MLJ 1]. It was held that "rents", despite the fact that they are referred to in... (d), may nevertheless constitute income from a source consisting of a business if they are receivable in the course of carrying on a business of putting the taxpayer's property to profitable use by letting it out for rent,". This confirms that the categories of income are not mutually exclusive and it can be of considerable importance, for example, when it comes to the question of whether any relief is available for losses sustained. As such relief is only given for business losses, the taxpayer will be eager to place his income in that category wherever possible. Subsequently, the Inland Revenue made available guideliness in an attempt to standardise the treatment of rent as a business source.

Non-Residents

No particular distinction is made between residnets and non-residents in the main charging provisions, but it would be ludicrous to suggest that Malaysia can tax somebody who has never set foot in Malaysia and never received any Malaysian income. Nevertheless, it is appropriate that non-residents should pay Malaysian tax on income that they derive from Malaysia, unless it is exempt from tax.

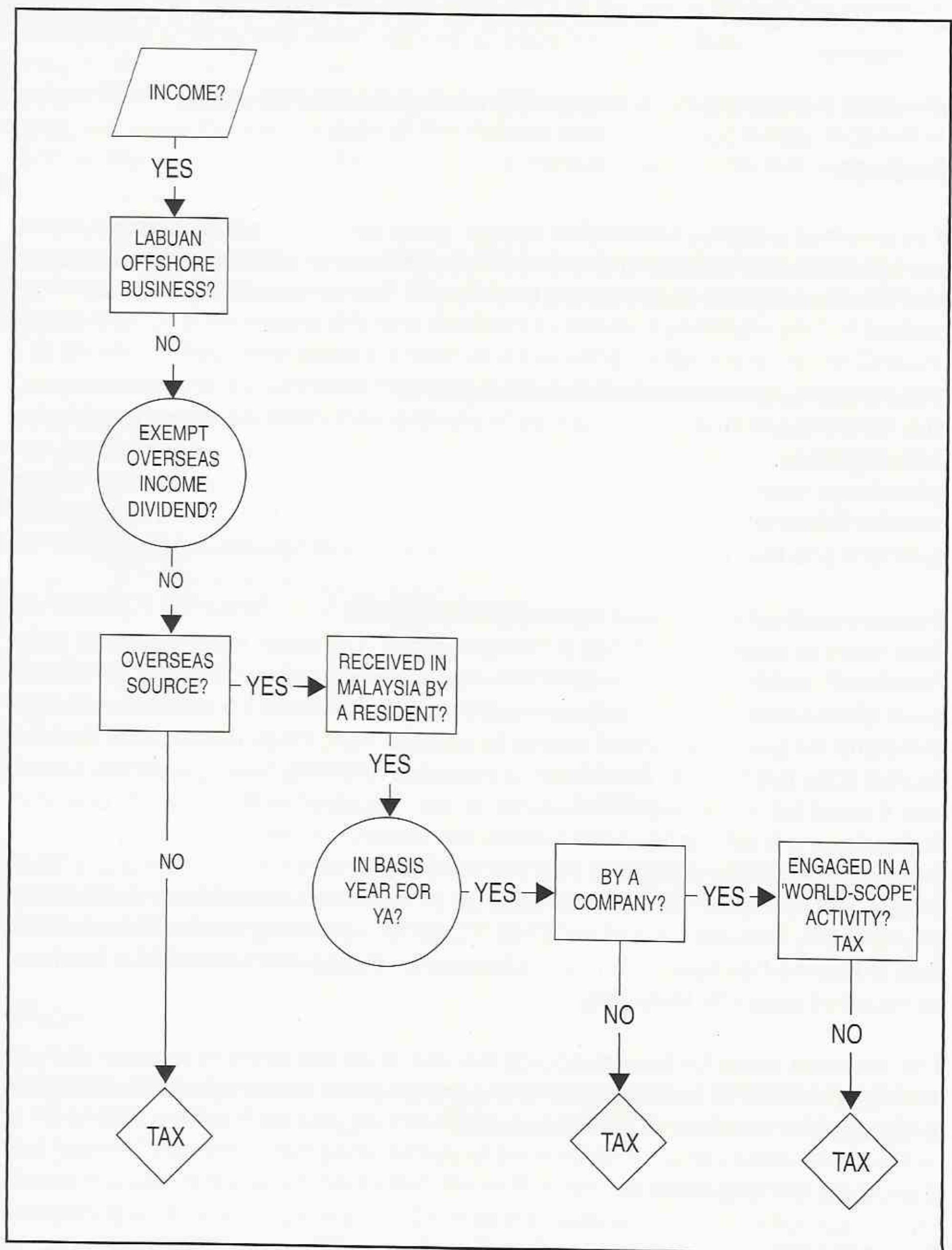
Practical considerations require that some rules should be made to determine how tax can be collected from non-residents when they are entitled to income accruing in or derived from Malaysia. In the following cases, this is achieved by requiring the payer to withhold tax at source from payments made to non-residents:

- contract payments (s. 107A)
- interest and royalty (s. 109A)
- services of a public entertainer (s. 109A)
- special classes of income (s. 109B)

Because of the practical distinction between residents and non-residents, some rules are necessary to make a distinction and these are contained in s. 7 (residence of individuals) and s. 8 (residence of companies and bodies of persons).

Aspects of income tax affecting non-residents, including the rules on residence and the effect of double taxation agreements will be covered in detail in later articles.

THE SCOPE OF CHARGE TO INCOME TAX IN MALAYSIA (FLOWCHART)



MALAYSIAN INSTITUTE OF TAXATION

RULES AND REGULATIONS (ON PROFESSIONAL CONDUCT AND ETHICS)

These rules and regulations are made by the Council of the Malaysian Institute of Taxation pursuant to Article 22 of its Articles of Association and shall come into force on 1 September 1995.

Members are required to observe proper standards of professional conduct and specifically to refrain from acts which have been described in the rules and regulations as misconduct, which includes, but is not confined to, any act or default likely to bring discredit to himself, the Institute or the taxation profession.

Members who fail to observe such standards may be required to answer a complaint before the Investigation and Disciplinary Committees.

TABLE OF CONTENTS

1. Fundamental Principles
2. Professional Independence
3. Competence and Due Care
4. Conduct of Practice
5. Member's Own Tax Affairs
6. Form of Practice
7. Descriptions And Designatory Letters
8. Clients' Monies
9. Fees
10. Confidentiality
11. Changes In Professional Appointments
12. Referrals
13. Incapacity Or Death Of A Sole Proprietor
14. Acts Discreditable To The Profession
15. Training and Continuing Professional Development

CONDUCT OF PRACTICE

4-1 (i) Before acting for a new client a member should communicate with his predecessor as required by paragraph 11-5.

(ii) On accepting instructions a member should normally set out in a letter of engagement to the client his understanding of the scope and nature of the assignment and invite the client to provide confirmation. This exchange of letters serves as the contract between the member and his client. Careful wording is needed to ensure that the scope of the work is fully defined and that the client understands what his adviser has agreed to undertake. Similarly, it is usually appropriate to agree, and set out in writing, the way in which fees will be computed.

(iii) Wherever practicable, a member should institute an internal review system in his office. The purpose of such a review would be to assist in ensuring that clients' instructions are being observed and that the level of services being provided is competent and appropriate.

4-2 (i) Once he has accepted a client's instructions, a member should not cease to act for the client until the relevant work has been completed unless:

a) the client requires him to do so; or
b) he has good cause and gives reasonable notice to the client.

(ii) If, after ceasing to act, a member receives a communication from a successor, he should proceed as set out in paragraph 11-6 below.

(iii) If a former client asks a member to hand over copies of all relevant papers either to the client or a successor agent, the member should co-operate. In particular, he should bear in mind that, with the exception of those working papers for which the client has not specifically paid, many of the documents on his files will in practice belong to the client. In the event of a dispute, a member who is not himself a lawyer should normally seek legal advice.

4-3 (i) A member should ascertain whether any other professional advisers are involved in any project or assignment which a client asks him to undertake, and the scope of their involvement. Subject to obtaining his client's consent, he should ensure that they become aware of the scope of his own involvement, and establish appropriate working relationships with them.

(ii) Where the member's advice is sought as to the appointment of other suitable professional advisers, he should make recommendations to his client's (or employer's) perceived best interests. This may involve providing several names from which his client (or employer) can choose.

4-4 A member should be satisfied that any work which he delegates is undertaken by staff who have been adequately trained to carry out the work involved.

MEMBER'S OWN TAX AFFAIRS

5-1 A member's own tax affairs should be kept up to date and all returns, accounts etc timeously lodged. While always important, this is particularly so since dilatoriness or incompetence in one's own affairs could well cause doubts in the minds of tax authorities as to the standard of the member's professional work.

FORM OF PRACTICE

6-1 (i) The use of a company as a practice medium may be subject to both statutory and professional restraints. It is the responsibility of every member to ensure that he complies with the law and with the regulations of any other professional body to which he belongs.

(ii) Subject to the above, a member may carry on a tax practice in corporate form. If he does so, he is subject to the same ethical and other requirements as a member practising as an individual. Any member who is a director of a company may be held responsible for every act of the company. Thus, the rights and duties of such a member are the same as those of a member who is a partner in a firm and the expression "corporate practice" is, for this purpose, synonymous with "firm".

6-2 A member may act in association with persons who are not members of the Institute. In such cases, each member who is a partner in a firm (or a director of a company) is responsible for ensuring that the Institute's Rules and Regulations are observed by the firm, its partners and employees, (or those of the company, where practice is conducted in corporate form).

6-3 If an amalgamation of two or more practices will materially affect the manner in which services are provided to clients then the clients who will be affected should normally be notified of the amalgamation after it has been successfully concluded.

Explanatory Note:

In the case of an amalgamation, clients would thus have been given the opportunity of deciding whether they wish to continue to retain the services of the newly constituted practice.

6-4 In a proposed dissolution of a practice, clients should be notified of the intended dissolution in advance.

DESCRIPTIONS AND DESIGNATORY LETTERS

7-1 Only a member who qualifies under Section 153 of the Income Tax Act, 1967 in describing himself as a tax agent, tax consultant or tax adviser shall use the designations "Approved Tax Agent" or "Registered Tax Agent".

7-2 A member may use in conjunction with the abovementioned designations, other designations or designatory letters to indicate:-

(a) membership of other professional bodies;

(b) possession of academic degrees or diplomas of institutions of higher learning or any academic post-graduate qualification from institutions of higher learning; or

(c) possession of civil or military honours or decorations.

Have you heard?

The

TAX NASIONAL IS ON THE NET!!!

Visit us on

http://www.jaring.my/yes/mia/main.htm and find out!

TAX NASIONAL SUBSCRIPTION FORM 1996

Post this form to
MALAYSIAN INSTITUTE OF TAXATION
Level 4, Dewan Akauntan,
No. 2, Jalan Tun Sambanthan 3
Brickfields, 50470 Kuala Lumpur
Malaysia
Telephone : 03-2745055
Facsimile : 03-2741783

1996 SUBSCRIPTION RATES

	RATES	
	PER ISSUE	PER ANNUM
Non MIT member	RM 30.50	RM 92.00
Student/MIA member	RM 15.50	RM 62.00
Overseas	US$ 17.00	US$ 52.00

The above prices are inclusive of postage.

Please Use Capital Letters

Mr/Mrs/Miss ______________________ Designation ______________________

Address ____

____

______________________ Poscode ______________________

Tel No. ______________________ Fax No. ______________________

I enclose a cheque/money order/bankdraft payable to Malaysian Institute of Taxation for RM/US$ ______________ for

__________ copy/copies or __________ year/years' subscription of Tax Nasional.

Note: *For overseas subscription, payment is accepted by bankdraft only.*

CONTRIBUTION OF ARTICLES

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

Manuscripts should cover Malaysia or international tax developments. Manuscripts should be submitted in English or Bahasa Malaysia ranging from 3,000 to 10,000 words (about 10-24 double-space pages). Diskettes, (3 1/4 inches) in, Microsoft Word or Word Perfect are encouraged. Manuscripts are subject to a review procedure and the editor reserves the right to make amendments which may be appropriate prior to publication.

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

MALAYSIAN INSTITUTE OF TAXATION
225750-T

IMPORTANT DISCLAIMER

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

This publication is provided on the terms and understanding that:

1. the authors, advisors and editors and the Institute are not responsible for the results of any actions taken on the basis of information in this publication, nor for any error in or omission from this publication; and
2. the publisher is not engaged in rendering legal, accounting, professional or other advice or services. The publisher, and the authors, advisors and editors, expressly disclaim all and any liability and responsibility to any person, whether a purchaser or reader of this publication or not, in respect of anything, and of the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication. Without limiting the generality of the above no author, advisor or editor shall have any responsibility for any act or omission of any other author, advisor or editor.

Printed by SP-Muda Printing Sdn. Bhd., No. 45, Jalan Ipoh Kechil, Jalan Ipoh, 50350 Kuala Lumpur. Tel: 4414829, 4410649, 4414734. Fax: 4416045

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 subsection (2)/(6) of Section 8 of the Companies Act, 1965 to act as an approved company auditor without limitations or conditions.
8. Any person who is granted limited or conditional approval under Sub-section (6) of Section 8 of the Companies Act, 1965 to act as an approved company auditor.
9. Any person who is an approved Tax Agent under Section 153 of the Income Tax Act, 1967.

Fellow Membership

1. A Fellow may be elected by the Council provided the applicant has been an 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.

TAX NASIONAL ADVERTISEMENT

The Four Ps of MARKETING

- Price, Place, Product and PROMOTION -

ADVERTISE IN THE TAX NASIONAL!

The TAX NASIONAL is the official publication of the Malaysian Institute of Taxation. The Journal which is published on a quarterly basis, will be circulated to all members, top government officials, selected public listed companies, financial institutions and also to other taxation and professional bodies overseas.

We would like you to take this opportunity to advertise in the TAX NASIONAL. Our rates are attractive and we know you will be able to reach your target market by advertising with us. The details of the advertisement rates are as follows:-

1996 ADVERTISEMENT RATES

	Full Colour	Black & White
DISPLAY ADVERTISEMENT		
Full Page	RM1,500.00	RM1,000.00
Half Page	RM 800.00	RM 600.00
Back Cover	+ 20%	
Inside Front/Back Cover	+ 10%	
Centrespread	+ 20%	
CLASSIFIED		
Full Page	RM400.00	
Half Page	RM200.00	
Other sizes	RM 4.00 per column cm	

For more information, CALL US TODAY at the MIT secretariat: Tel. No. 03-2745055 or Fax No. 03-2741783.