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Memorandum to the Budget 1998

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

The objectives of the Institute are, inter alia:

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.

MEMORANDUM TO THE MINISTER OF FINANCE FOR THE 1998 BUDGET

A. The 1997 Budget

Dr. Zainal Aznam Yusof of the Institute of Strategic and International Studies (ISIS) Malaysia , in his comments on the 1997 Budget[1], made the following observations:

The primary thrusts of the 1997 Budget were focused on 3 key areas:

1. To achieve sustainable growth through enhanced productivity;
2. Strengthen the balance of payments position with improvements in services sector and higher domestic production; and
3. To strengthen the agenda for social development.

To sustain growth through enhanced productivity, the 1997 Budget has introduced special incentives to promote high-technology industries multimedia application, establishing a Higher Education Fund, and reducing inflationary pressures. To improve the balance of payments, exports of services are encouraged, tourism activities are strongly promoted and incentives are offered to the financial sector

The success of the strategy adopted in the 1997 Budget is evidenced by continued high growth rate of the Malaysian economy in the first quarter of 1997. This is revealed by Bank Negara's quarterly report 'Economic and Financial Developments in the First Quarter of 1997' which reported a RM2 billion surplus in the trade account. The challenging task of sustaining high growth rate with low inflation was again successfully executed, with the inflation rate moderating to 3.1%, as compared to 3.4% for the first quarter of 1996.

According to the report, the first quarter growth momentum was sustained mainly by sustained domestic activities in the manufacturing, construction and services sector.

B. The 1998 Budget

The MIA/MIT's proposals for the 1998 Budget will focus on the following areas:-

1. Measures for promotion of the services sector.

While the manufacturing sector has traditionally been the moving force providing impetus for the dynamic growth of the Malaysian economy, further development of the economy may be enhanced by looking towards promotion of the services sector as the engine of growth. While the services sector has grown tremendously and remains the single largest sector in the country's economy, contributing 44.7 % to real GDP and employing 47% of the nation's workforce, potential for further growth is evident when these figures are compared with those of some developed economies. In the early 1990s, services accounted for 63% of GDP in Singapore, 72% in the United States and 81% in Hong Kong.

By the year 2005, the services sector 's share of the GDP in Malaysia is expected to increase to 48.4% of GDP. *For the coming 1998 Budget, the major issues to focus on are those concerning the services sector.*

2. Proposals that address issues relating to administration and operational matters of the Inland Revenue Board with a view to promotion of greater efficiency

The IRB has been corporatised as from 1 March 1996. With corporatization comes a new dynamism and a more "corporate" outlook . The IRB has shown that it seeks actively to work together with the private sector for the promotion of Smart Partnerships that aim to bring about increased revenue for the government and greater "customer" satisfaction amongst the tax-paying public. The MIA/MIT welcome this 'wind of change' and will endeavour to work proactively and in tandem with the government's aspirations embodied in the concept of 'Malaysia Incorporated.'

The MIA/ MIT's proposals in this category are made with the objective of bringing about greater efficiency in operational matters pertaining to administration of the tax system which is imperative in bringing about the "win-win" situations that are sought for in Smart Partnerships.

3. Other proposals

These pertain to other issues relating to direct and indirect taxation, the accountancy profession, and the welfare of workers in the labour force (in particular, SOCSO contributors.)

C. Summary of Proposals

The following is a summary of the proposals contained in this Memorandum.

[1] "Highlights Of The Economic Report 1996/1997 and 1997 Budget Speech"; 1996, Price Waterhouse

MEMORANDUM TO THE MINISTER OF FINANCE FOR THE 1998 BUDGET

PROMOTION OF THE SERVICES SECTOR

1. **Reduction of Personal Income Tax rates as a measure to attract foreign expertise to Malaysia (Appendix I)**

An effective way to overcome the critical constraint of shortage of expert manpower in the service industry in the medium term, is to make Malaysia more competitive and attractive in terms of its tax regime for foreigners with the requisite skills to relocate. This should be seen as a supplement to the action already taken by the government to remove restrictions on the employment of expatriate employees for specific types of businesses (e.g. International Procurement Centres and companies in the Multimedia Super Corridor.)

The proposed tax structure (Table 1) aims to make Malaysia's personal tax regime more competitive vis-a-vis neighbouring countries, especially Singapore.

2. **Exemption of foreign sourced income for individuals (Appendix II)**

It is proposed that extension of exemption of foreign sourced income under section 3C of the Income Tax Act, 1967, be extended to individuals with the specific view to encouraging individual professional practitioners to venture abroad and actively explore avenues for exporting their services overseas.

3. **Exemption of income of unit trust holders (Appendix III)**

The financial sector has been identified as an engine to power the Malaysian economy to further rapid growth. As an indirect stimulus to the financial sector, it is proposed that investment income of unit trust holders be totally exempted from tax. The direct beneficiaries from implementation of this proposal are investors in the lower and middle income group who will be provided with an attractive alternative investment opportunity. The measure is also in line with the government's policy to encourage the savings habit among Malaysians.

4. **Levy on acquisition of real property by foreigners (Appendix IV)**

To distinguish speculators in the property market from genuine investors, it is proposed that :

i) **Exemption** of the levy be granted to foreigners purchasing properties for use in their businesses or where the acquisition is part of a scheme of amalgamation or reorganisation, in line with the exemption granted in paragraph 17 of the Real Property Gains Tax Act, 1976.

ii) **Refund** of levy after a specific holding period which is considered long enough to show the purchasers' genuine intention to purchase the property as an investment holding.

The above 2 proposals should be backdated to the date the levy was first introduced.

ISSUES RELATING TO OPERATIONAL MATTERS OF THE INLAND REVENUE BOARD

1. **Payment of interest for tax overpaid by taxpayers (Appendix V)**

For reasons of equity, interest should be paid to taxpayers who have overpaid tax. This is applicable in respect of repayment of tax deducted at source from dividend income, as well as taxpayers who have overpaid tax through STD deductions or installment schemes

2. **Back years assessment and record-keeping reduced to 6 years (Appendix VI)**

The power granted to the IRB to raise back years assessment up to 12 years also entails the onerous responsibility on the part of taxpayers to store records relating to its account for at least 12 years. This obligation is too burdensome and is not in accordance with the legislative requirement of the Companies Act, 1965 and the practice in other countries. It is proposed that the period for which back years' assessment can be raised be reduced to 6 years.

3. **Femme Sole status for women (Appendix VII)**

The tax administration system should be amended to allow a married woman to be issued with her own return form in recognition of a married woman's individual status as well as her right to choose to preserve confidentiality of information regarding her own financial affairs.

4. **Late payment penalties (Appendix VIII)**

The Income Tax Act, 1967 should be amended to eliminate the exposure of taxpayers to the risk of being unjustly penalised twice for the same late payment offence (under section 103 and 107B). A penalty calculated on the basis of current market interest rates is more appropriate and equitable than the current flat rate penalty imposed by the IRB.

5. **Simplification of capital allowance computation (Appendix IX)**

Proposals to simplify Capital Allowance computation by :

i) Reducing the rate of annual allowance to 3 rates only (10%, 12% and 20%).

ii) Writing off assets costing RM1,000 or less as revenue expenditure.

In view of the ever increasing prices of motor vehicles, maximum qualifying expenditure allowed in respect of motor vehicles not licensed for commercial transportation of passengers and goods should be increased to RM100,000 from the current maximum of RM50,000 which has been in force from the year of assessment 1991.

6. **Longer time limit for submission of return form (Appendix X)**

The Income Tax Act 1967 should be amended to extend the time limit to submit a return to 6 months. The measure will not have a major effect upon the timing and quantum of tax collections by the IRB. The dispensing of work related to applications for extension of time will be beneficial to both the IRB and tax agents as manpower could then be diverted to more urgent tasks leading to greater efficiency.

OTHER PROPOSALS

1. **Full deduction for professional services (Appendix XI)**

Investment holding companies incur expenses on professional fees such as fees for accounting, secretarial, and taxation services in order to comply with mandatory requirements of the law. Such expenses should be allowed in full notwithstanding that the company is in the 'business' of investment holding.

2. **Sales Tax and Service Tax (Appendix XII)**

i) Increasing sales tax threshold to RM500,000

As a measure to promote small scale industries, the threshold for payment of sales tax should be increased from RM100,000 to RM500,000.

ii) Bad Debts Provision for Sales Tax and Service Tax

For reasons of equity and administrative efficiency, taxable persons who have paid sales tax or service tax on debts that can be shown to have become uncollectible should be allowed to deduct the amount paid as a credit from tax currently due to be remitted to the respective Sales or Service Tax office.

3. **Inclusion of accountants as Investment Advisers (Appendix XIII)**

Accountants possess the degree of competence in knowledge and experience required to qualify to be included as "Investment Advisers" as defined in the Securities Industry Act.

4. **Health and medical benefits for SOCSO contributors (Appendix XIV)**

To provide added security for workers in the labour force, coverage provided by SOCSO should be extended to include medical benefits for treatment of illnesses which may or may not be related to employment or occupation.

APPENDIX I

SKILLED MANPOWER FOR THE SERVICES INDUSTRY
A Case For Reduction of Personal Tax Rates

In recent years the government has introduced a number of incentives aimed at promoting growth of the services sector amongst which are incentives for:-

- Operational Headquarters (OHQ) which provide qualifying services to its offices or related companies outside Malaysia.
- International Procurement Centres (IPC), aimed at promoting the location of central marketing and distribution activities of the multinational corporations in Malaysia.
- IT based industries located in the Multimedia Super Corridor (MSC).

Recognizing the need to free potential investors from the constraint posed by shortage of skilled manpower especially in relation to the concept of the MSC, one of the incentives granted to IPCs and companies granted MSC status is the freedom to bring an unrestricted number of expatriates into the country, according to the needs of the establishment. Whilst this is certainly a right step to take in dealing with the problem of lack of skilled manpower, the relaxation of regulations may be made more effective by making Malaysia an attractive place in terms of its income tax regime, for foreigners with the requisite skills to relocate. **There is a case for reviewing existing tax rates and restructuring the tax brackets for individuals in order to make Malaysia more competitive and attractive vis-a-vis our neighbouring countries which are also competing for foreign knowledge workers, especially Singapore.**

PROPOSAL

It is proposed that:-

- The tax brackets be reduced from the existing 9 to 6;
- the non-taxable threshold be raised to RM10,000;
- **the maximum tax rate be reduced to 28%;**

The proposed structure is shown in Table 1.

The grounds for the proposal are summarized below:

1. The lowering of tax rates will not reduce total revenue from direct taxation as the Acting Prime Minister has himself recognized when he was quoted to have said in a recent speech in Sarawak (NST 21 May), "When we reduce tax, we found that the people produce more, are encouraged to work harder and it leads to increase in revenue."

2. To open up the Malaysian services sector and make it more competitive, supply of skilled labour and expertise can be a critical constraint. Gearing up the education industry to produce the required skills is a long term solution. In the medium term, an effective way of dealing with the problem is to remove restrictions on expatriate employment as well as to make Malaysia's tax regime more attractive for skilled employees to relocate. Table 1 also shows a comparison of tax payable under the proposed tax rates and tax payable for comparable tax brackets under tax rates applicable in Singapore for the year of assessment 1997. It can be seen that the new structure will bring Malaysia into competitive position vis-a-vis Singapore and place it in a position to tap the pool of expatriate personnel that is expected to become available for relocation after Hong Kong reverts to Chinese rule in July 1997.

   "There has been a resiting of certain types of businesses and personnel to Singapore from Hong Kong and even from Tokyo. This market is up for grabs but the window of opportunity is open only until the year 2000 or thereabout." (NST, 14 Sept 19962)

Table 1

PROPOSED INDIVIDUAL TAX RATES FOR THE YEAR OF ASSESSMENT 1998

	CURRENT			PROPOSED		INCOME TAX PAYABLE IN SINGAPORE AT 1997 TAX RATES
	Chargeable income RM	Rate	Income Tax Payable RM	Rate	Income Tax Payable RM	S$
On the first On the next	2500 2500	 2	0 50	0 0	0 0	
On the first On the next	5000 5000	 4	50 200	 0	0 0	100
On the first On the next	10,000 10,000	 6	250 600	 5	0 500	275
On the first On the next	20,000 15,000	 10	850 1,500	 5	500 750	775
On the first On the next	35,000 15,000	 16	2,350 2,400	 10	1,250 1,500	1,975
On the first On the next	50,000 20,000	 21	4,750 4,200	 15	2,750 3,000	3,775
On the first On the next	70,000 30,000	 26	8,950 7,800	 20	5,750 6,000	6,975
On the first On the next	100,000 50,000	 29	16,750 14,500	 25	11,750 12,500	12,775
On the first On the next	150,000 100,000	 30	31,250 30,000	 25	24,250 25,000	23,775
On the first	250,000		61,250		49,250	48,775
On all income exceeding RM250,000		30		28		
On the next	150,000	30	45,000	28	42,000	
On the first	400,000	30	106,250	28	91,250	87,275
On all income exceeding S$400,000						28%

3. The development of Labuan as an IOFC and premier tourist destination in Malaysia is somewhat hampered by the fact that the higher personal tax rates in Malaysia as compared to Singapore imply that Labuan cannot attract the same quality of personnel or on the same terms as Singapore (NST, 14 Sept 1996).

4. Increasing the level of non taxable threshold to RM10,000 will also minimize the tax burden of lower income groups and relieve the IRB of the burden of processing returns for this category of taxpayers. This will result in increased operational efficiency of the IRB which, together with the widening of the tax base, will ensure the fulfillment of the Acting Prime Minister's observation that "the more we reduce tax, the more we earn in revenue." (NST, 21 May 1997)

[2] Article by R. Thillainathan on "Services Sector As A New Engine Of Growth"

Appendix II

EXEMPTION OF FOREIGN SOURCED INCOME FOR INDIVIDUALS

Section 3C of the Income Tax Act, 1967 grants exemption to a company resident in Malaysia (except those carrying on the business of banking, insurance or sea and air transport undertakings) from tax on income remitted to Malaysia from overseas. However, this exemption is not extended to individuals. Since there is also an uncertainty with regard to interpretation of legislation pertaining to the payment of exempt dividend out of income exempted under section 3C, companies have so far been wary of distributing exempt dividend to shareholders out of exempt foreign sourced income. As such, individual taxpayers have little opportunities to benefit from the concession accorded by section 3C.

It is submitted that efforts to promote development of the services sector should take into account the large numbers of professional practitioners providing services in the respective professions.

PROPOSAL

It is proposed that the extension of exemption of income under section 3C be extended to individuals with the specific view to encouraging individual professional practitioners to venture abroad and actively explore avenues for exporting their services overseas.

In view of Malaysia's push to develop the country as a centre of excellence in education and health services, this step will provide impetus for Malaysians with the right skills to take advantage of opportunities to garner experience abroad and further enhance their skills with a view to enriching the pool of skilled professionals contributing to the achievement of the above vision.

Appendix III

EXEMPTION OF INCOME OF UNIT TRUST HOLDERS

The financial sector has been identified as an engine of growth that could spur the growth of the Malaysian economy to greater rapidity over the next decade (NST 14 Sept 19963). Last year the GDP share of the financial sector was about 10% as compared to more than 25% in Hong Kong and Singapore.

PROPOSAL

As an indirect stimulus to the financial sector, it is proposed that investment income of unit trust holders be totally exempted from tax.

Currently, unit trust holders are exempted from tax on income distributed by unit trust out of the following income which are specifically exempted under paragraph 35 of schedule 6 of the Income Tax Act, 1967:-

Interest paid or credited to any individual, unit trust and listed closed-end fund

a) in respect of securities or bonds issued by the government or
b) in respect of bonds, other than convertible loan stocks, issued by public companies listed on the KLSE
c) in respect of bonds, other than convertible loan stock, issued by a company rated by Rating Agency Malaysia Bhd. Or Malaysia Rating Corporation Bhd.
d) In respect of Bon Simpanan Malaysia issued by the Central Bank of Malaysia.

The measure to grant total exemption on income of unit trust holders will bring about the following benefits:-

1. Provide an attractive alternative investment opportunity for investors particularly those in the lower and middle income group who are quite aware that returns from traditional forms of investment for the small investor (such as interest from fixed deposits or savings account) are definitely not the most attractive.

2. Encourage the savings habit among Malaysians. The government has already accorded exemption for specific types of interest and this is in line with existing government policy to encourage savings. Although targetted beneficiaries are investors in the lower and middle income group, a tax free return on a relatively low-risk investment will make the unit trust a more attractive form of investment for larger institutional and higher income investors as well.

3. The stimulus provided to the unit trust industry as a subsector of the financial sector will provide greater diversification opportunities for financial institutions providing more traditional financial services.

Appendix IV

LEVY ON ACQUISITION OF REAL PROPERTY BY FOREIGNERS

The 1996 Budget introduced a levy on every acquisition of real property by foreign interests. The levy applies on every purchase of real property priced at RM250,000 or more by non citizens or foreign companies.

Whilst the above levy is necessary to curb speculation in the property market by foreigners, it may be necessary to distinguish genuine investors from speculators.

PROPOSAL

As a fine-tuning measure to ensure that government's efforts to encourage inflow of capital investment to the country are not unnecessarily thrown out of gear by a course of action which was implemented to address a different problem, it is proposed that:

1. **Exemption** on the levy to be granted;

   a) in respect of purchase of properties which are to be used for purposes of the business of the purchaser or for staff accommodation;
   b) where the acquisition is part of a scheme of restructuring or reorganisation of a group of companies for the purpose of bringing about greater efficiency or in compliance with government policy on capital participation. This is in line with the exemption accorded in respect of Real Property Gains Tax (RPGT) in paragraph 17 of schedule 2 of the RPGT Act, 1976. This is also in line with the exemption in respect of Stamp Duty accorded in respect of amalgamation or reconstruction under section 15 of the Stamp Duty Ordinance 1949.

2. **Refund** of levy be made to the foreign purchasers of properties after a specific holding period, which is considered long enough to show the purchasers' genuine intention to purchase the property for holding as an investment in Malaysia.

The above proposals should be backdated to the date the levy was first introduced.

Appendix V

PAYMENT OF INTEREST FOR TAX OVERPAID BY TAXPAYERS

With the legislation in place for enforcement of tax payments (such as those relating to Schedular Tax Deductions and payments by installments) as well as greater administrative efficiency brought about by corporatization, the IRB is now in a position to address a long-standing issue of fairness to taxpayers which relates to refunds of tax overpaid by taxpayers.

Presently, late payment penalties are imposed on payments after the statutory period of 30 days after issue of a notice of assessment to a taxpayer as well as on late payments of installments of tax. Unfortunately, there are no legislative provisions or administrative procedures that provide for some form of compensation to taxpayers:

- who fail to receive repayments of tax deducted at source from dividend income within a reasonable period. The IRB's Taxpayers' Charter provides an undertaking that repayments of tax will be made within 6 months of submission of return, but cases of repayments made a year or more after the date of submission of return are not uncommon.
- who are refunded tax overpaid only after inordinate delay

PROPOSAL

It is proposed that:

1. Taxpayers who are entitled to a repayment of tax deducted at source from dividend income **should be compensated by way of interest on the amount of repayment of tax if the repayment is not effected within a reasonable period (to be agreed upon by consultation) after the agreed period of 6 months stated in the IRB's Taxpayers' Charter.**

2. Taxpayers who have been issued with notices of assessment and have determined that tax has been overpaid, (either through the STD scheme or by installment payments) should be given a refund of tax overpaid upon request by the taxpayer. They should be similarly compensated by way of interest on the amount of tax overpaid if the refund is not effected within a reasonable period (to be agreed upon by consultation).

Calculation of interest could be based on the Base Lending Rate.

Appendix VI

BACK YEARS ASSESSMENT AND RECORD KEEPING LIMITED TO 6 YEARS

Section 91 of the Income Tax Act, 1967, which allows the IRB to raise back years assessment up to 12 years also entails a very onerous burden of responsibility on taxpayers to store records relating to the accounts of the business for at least 12 years. This is a burdensome task to taxpayers and to some extent, a factor that contributes to the tendency for accumulation of 'backlog' cases which have not been finalized. It is also not in keeping with the need for both the IRB and business entities to keep up with the fast paced developments in other areas of corporate and commercial governance.

PROPOSAL

It is proposed that the number of back years assessment which can be raised by the IRB as well as record keeping required be limited to 6 years. This is in line with :

1. Other legislation, notably the Companies Act 1965, which requires companies to keep records for 7 years;
2. Legislation in other developed economies, e.g. Singapore and Australia which limit their record-keeping requirements to 6 years.

Appendix VII

FEMME SOLE STATUS FOR WOMEN

Presently a woman loses her status as a "femme sole" when she gets married and is required to declare her income in the return of her husband. This is an administrative procedure put in place by the colonial administrators, and it would not be wrong to say that very few today would disagree with the view that such a procedure is not in tandem with the tremendous progress that has been achieved by Malaysia in other areas of economic and social development since the achievement of independence till now, as the country prepares to usher in the twenty-first century and the achievement of the vision expounded in Wawasan 2020.

Besides non-recognition of woman's status as an individual in her own right, this administrative procedure also does not accord recognition to the right of a woman to choose to preserve confidentiality of information and privacy concerning her own financial affairs, even within the marriage relationship.

PROPOSAL

It is proposed that the tax administration system be amended to allow a married woman to be issued with her own tax return form. However, registration of separate file reference numbers for husband and wife will not be necessary.

Appendix VIII

LATE PAYMENT PENALTIES

(i) Penalties imposed under section 103 and 107B of the Income Tax Act, 1967

Presently the Income Tax Act, 1967 imposes penalties in respect of late payments of tax under the following sections:

- Section 103 - applicable in respect of failure to pay within 30 days of the service of the notice of assessment.
- Section 107B - applicable in respect of failure to pay an installment of tax within 30 days of the date on which the payment is due.

Under the present legislation, a taxpayer is exposed unjustly to the risk of being penalised twice for the same offence, once under section 103 and again under section 107B.

PROPOSAL

To amend the Income Tax Act, 1967 to eliminate the exposure to double penalties under section 103 and 107B.

(ii) Rates of Penalties

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

The imposition of flat rate penalty is out of step 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 IX

SIMPLIFICATION OF CAPITAL ALLOWANCE COMPUTATION

(i) Simplifying The Rates Of Capital Allowances

Currently, the prescribed rates of annual allowances on qualifying plant and machinery ranges from 6% to 20%, depending on the type of asset and the nature of the industry. In order to simplify the calculation of capital allownces, it is proposed to reduce the classification of assets into 3 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 Japan.

PROPOSAL

To simplify rates of annual allowance to 10, 12 or 20 percent or to follow the rates for accounting purposes.

(ii) Expensing Of Assets Costing RM1,000 or Less

Currently, all assets, regardless of the cost, 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 simplify the calculation of capital allowances, it is proposed that assets costing a certain amount, say, RM1,000 or less 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 RM 1,000 or less will not involve any overall loss of revenue to the government as it is merely a difference of timing in granting the allowances. This would however, save much time and cost to the businessmen in terms of record keeping and the preparation of the capital allowances schedule.

PROPOSAL

To write off assets costing RM1,000 or less.

(iii) Increase Of Qualifying Expenditure For Motor Vehicles

The qualifying expenditure in respect of a motor vehicle which is not licensed 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 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 to above RM100,000. Prices are expected to increase further due to the increased cost of production and appreciation in the currencies of the countries in which the major car manufacturers are found. In view of this, the maximum qualifying expenditure should be revised to a more realistic figure.

PROPOSAL

To increase maximum qualifying expenditure for motor vehicles under paragraph 2(2) of Schedule 3 of the Income Tax Act, 1967 from RM50,000 to RM100,000.

Appendix X

LONGER TIME PERIOD FOR SUBMISSION OF RETURNS

Current legislation provides that the annual Return Forms issued to taxpayers have to be completed and submitted to the IRB within 30 days of the date of issue of the form. However, it is the established practice to allow extension of time to submit return forms on application by the taxpayer, subject to certain conditions relating to year ends and arrangements for payments of tax by installments. Extension of time is normally granted to the ends of the months of May and July and in some cases, to August of each year.

The IRB has already put in place the legislation and administrative procedures for enforcement of payments of tax by individuals, companies and other business entities (e.g. via STD deductions and installment payment schemes.) The date of submission of returns by a taxpayer is not a critical factor in determining the amount and timing of revenue collected by the IRB.

It is submitted that the IRB could now divest itself of its "policing" function with regard to timing of submission of returns, and look towards a self-regulatory system whereby the responsibility for timely submission of the Annual Return rests solely with the taxpayer and those providing taxation services to taxpayers. This could be seen as a preliminary step in preparing the taxpaying public for a self-assessment system of taxation.

PROPOSAL

It is proposed that the Income Tax Act, 1967 be amended to extend the period of time allowed for submission of a return form to 6 months from the date of issue of the return.

The grounds for the proposal are as follows:

1. Such an extension will not have a major effect on the timing or amount of tax collections by the IRB.

2. The extension will not give rise to the notion that tax agents are no longer responsible to plan their program for staggering the dates for submission of returns for their clients within the period allowed by the law. This is because it would be impossible for any tax agent (who wishes to stay in business) to have a work program in which returns for all his clients are submitted just before expiry of the given deadline.

3. Individuals are not likely to gain any undue advantage from the extension of time as most are required to pay tax under some form of compulsory payment scheme. On the contrary, it is in their interest to submit their returns early as the early submission of a return is likely to be followed by early issue of the notice of assessment. This means that over or underpayments of tax could also be determined earlier and a refund of tax overpaid could be requested for if necessary.

4. The measure would free IRB personnel from the unprofitable task of processing applications for extension of time and the need to monitor each and every case for the date to which extension of time is granted. This would free manpower for other urgent tasks and lead to greater operational efficiency.

5. Similarly , the measure will dispense with the need for tax agents to perform work relating to application for extension of time on behalf of their clients (for which additional fees are charged) and free them from the tight constraint of working under threat of penalty if a particular dateline is missed by even one day. This will allow them to place more focus on other matters affecting their clients' interest.

However the above is not a suggestion that there should be no penalty for late submission of return. To serve as a deterrent to those who intend to abuse the privilege conferred by the extended time limit, a penalty should be imposed automatically after the extended deadline, the calculation of which could take into account the longer time limit granted. However, provision should be made for further extension according to the discretion of the Director General of Inland Revenue for exceptional and deserving cases.

Appendix XI

FULL DEDUCTION FOR PROFESSIONAL SERVICES

Professional fees such as accounting, secretarial, audit fees and fees for taxation services are presently included as "permitted expenses" under section 60F of the Income Tax Act 1967. Only a portion of these expenses, the calculation of which is based on the formula given in that section, is allowed to be deducted in respect of investment holding companies.

PROPOSAL

It is proposed that such fees be allowed in full for the following reasons:

1. These fees are necessarily incurred by the company in order to comply with the mandatory requirements of the Companies Act, 1965.

2. They are operational expenses incurred to carry on the business of the company, although the "business" in such cases is the business of investment holding.

It is proposed that expenses incurred on the following be included as deductible expenses;

- **Accounting**
- **Audit**
- **Taxation services**
- **Secretarial services**
- **Annual General Meeting**
- **Annual Report Printing**
- **Share registration**

Appendix XII

SALES TAX AND SERVICE TAX

(i) Increase of Sales Tax Turnover Limit From RM100,000 to RM500,000

PROPOSAL

As a means to promote small scale industries, the exemption limit of turnover for sales tax should be increased across the board from the present limit of RM100,000 to RM500,000.

(ii) Sales And Service Tax in Respect Of Bad Debts

Presently, **Sales tax** has to be remitted to the Sales Tax office within 28 days from the expiration of the taxable period which is 2 calendar months.

Service tax is required to be remitted to the Service Tax Office when payment is received for services provided but where payment has not been received within 12 months from the date of the issue of the invoice for the services provided, service tax is due to be paid on the day following the expiration of that 12-month period.

In both cases, a penalty is imposed if tax remains unpaid after the expiration of the period allowed for payment of the tax due. Since tax has to be paid regardless of whether the taxable person has collected the tax from the customers to whom he has sold goods or provided services, the only way by which he could avoid the penalty is to bear the tax himself.

Neither the Sales Tax Act, 1972, nor the Services Tax Act, 1975, makes any provisions for bad debts, thereby leaving the taxable person to shoulder the burden of the tax in the event that his customers fail to pay for the goods or services sold to them. This is unfair to the taxable person who is only acting as the agent of the government agency that is charged with the responsibility of collecting the tax.

PROPOSAL

It is proposed that the relevant Acts be amended to allow the taxable person to deduct sales or service tax which has been paid for debts which can be shown to have become uncollectible, from sales or service tax currently due to be remitted to the respective offices.

This procedure will relieve the taxable person from the tedious and time-consuming process of appeal to the Director General of Customs or the Finance Minister himself, which is currently the only course of action available.

Appendix XIII

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 of 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 XIV

HEALTH AND MEDICAL BENEFITS FOR SOCSO CONTRIBUTORS

The Social Security Organization (SOCSO) administers the Employment Injury Scheme and the Invalidity Pension Schemes. These schemes are for the purpose of providing cash and medical benefits to employees in case of invalidity, disablement, death or injury in the course of employment, including contraction of occupational diseases.

The 1995 Annual Report of SOCSO (the latest available) showed that SOCSO's Fund stood at RM 4,464 million. Income for 1995 amounted to RM950.7 million, of which 90.8% or RM673.0 million was from employer and employee contribution, while RM274.0 million or 28.8% came from investment returns. In 1995, contribution had increased by RM99.3 million or 17.3%.

By comparison, the amount of benefit payments for 1995 totaled only RM289.0 million. This represented an increase of about RM75.5 million (or 36.4%) over the previous year.

The figures show that there is scope for widening the coverage provided by the schemes administered by SOCSO, so that a greater range of benefits may be enjoyed by contributors, who are now able to make claims only in cases of injuries or death in the course of employment. This is especially so in the light of the rule that those drawing a salary of less than RM2,000 who are required to contribute to the scheme will continue to remain in the scheme even though his or her monthly salary may subsequently exceed RM2,000.

Presently, cash and medical benefits payable by SOCSO are confined to injuries, disablement or death related to employment or contraction of "occupational diseases" which are specified in the Employee's Social Security Act, 1969. SOCSO's Annual Report for 1995 reports that the possibility of introducing new benefits are being studied. The schemes being studied include:

- Maternity Insurance Scheme
- Sickness Insurance Scheme
- Family allowance Insurance Scheme

PROPOSAL

It is proposed that SOCSO coverage be extended to include medical benefits for treatment of illnesses which may or may not be employment or occupation related, particularly illnesses that are life–threatening or which may require long term treatment. In the context of current concern for escalating costs of medical treatment and health care which has far-reaching social impact, the additional security provided by such coverage will be highly valued by every SOCSO contributor. The members of the labour force in this country deserve every action taken to improve their welfare as their contribution to the dynamic growth of the economy is a vitally important one.

The Stamp Law - On Assessments, Objections, Appeals and Claims

By: E. J. Lopez, Former Director of Stamp Duties

The stamp law has had a history of its application in this country of more than 100 years, originally having been in force by way of State Enactments. But as has been previously observed of the English law it "has not become simple by the lapse of time ...". The sustained strength of the economy, apart from causing rapid changes in equity control has also given rise to increasing complexity in legal documentation. Interpretation and comprehension of the application of the law therefore continues to be challenged. It may therefore be appropriate to consider and/or invite comment upon some of these recent challenges.

1. On Assessments

The term "assessment" is not defined by the Act[1]. It is no more than a term of art, descriptive, in the instance of the management of the stamp law, of an act undertaken and performed by the Collector of Stamp Duties. Nevertheless it received judicial consideration consequent to a preliminary objection raised on behalf of the Collector in **Shell Malaysia Trading Sdn. Bhd. v. Pemungut Duti Setem, Johor Bahru (1990) 1 MLJ 48**. Abdul Malik J., in considering submission with respect to the Collector's formal statement or notification of liability, adopted an observation by Issacs J. in **The King v. The Deputy Federal Commissioner of Taxation for South Australia ex parte Hooper (1926) 37 CLR 368**:

'An "assessment" is not a piece of paper: it is an official act or operation; it is the Commissioner's ascertainment, on consideration of all relevant circumstances, including sometimes his own opinion, of the amount of tax chargeable to a given taxpayer. When he has completed his ascertainment of the amount he sends ... "a notice of assessment" ... But neither the paper sent nor the notification it gives is the "assessment". That is and remains the act or operation of the Commissioner.'

The Collector's act of ascertaining liability normally requires completion of two processes:

I. the ascertainment of the form and substance, i.e., the legal effects, of the instrument for the purpose of determining its classification under the charge provisions of the Act described as the First Schedule.

II. if that instrument be found liable to ad valorem duty the ascertainment of the value base upon which the rate as specified by the First Schedule shall be applied to calculate the amount payable.

A matter of some apprehension to the tax practitioner apparently was brought about by the current practice at some stamp centres with regard to completion of the second process in ascertaining the duty payable upon share transfer instruments of private and unlisted public companies. It would appear that where the transfer on sale is in respect of 50,000 or more share units, the duty assessed will not be calculated in terms of the pecuniary consideration expressed by the instrument or, in the case of non-arms-length transactions, on the net tangible asset value or an alternative objective measure of value but upon *"a price earning ratio of 18, that figure being based on the average price earning ratio of all listed counters on the KLSE discounted for 30 percent.*[2]" That practice bears a measure of scrutiny.

It would be pertinent to note that the charge to duty as respects a share transfer instrument *"On sale ... (is) to be computed on the price or value thereof on the date of transfer ...* [3]". That expression is in conformity with the wording of the substantive provision stated by Section 13(1):

"Where an instrument is chargeable with ad valorem duty in respect of:-

[1] Act 378/Stamp Act, 1949

[2] Tax Nasional December 1994 at pg. 16

[3] Item 32(b) First Schedule of the Act

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a) ...

b) any stock or marketable or other security

the duty shall be calculated on the value, on the day of the date of the instrument ... of the stock or security according to the average price thereof or, if there be no price, according to the value thereof."

In the case of transfers of stock and marketable securities therefore the amount of duty payable must be calculated upon 'value' in the absence of information on the 'average price' of such stock or security. The Act does not include an interpretation for the term 'average price' and it follows that this term need not necessarily be construed as being limited to that produced by the KLSE with respect to listed stocks. Then again the 'value' of stock may be measured by means of more than one indicator and it is not open to the stamp centres to specify the employment only of an unreliable indicator.

The price of unlisted stock may not be subject to the elements of a true market. But in an arms-length transaction, as between a willing buyer and willing seller, the pecuniary consideration, in the absence of objective evidence to the contrary, must be assumed to have been agreed in terms of an average price of that block of negotiated stock after consideration of the Balance Sheet and all factors influencing previous progress intended development of the Company's business enterprise and projected future earnings.

It may be in point to observe that:-

I. in appeals against value ascertained for purposes of calculating stamp duty or compensatory payments, the Courts have consistently required presentation of an objective evidence of value

II. the Collector's capacity to disregard the value of the pecuniary consideration expressed by the instrument may only be undertaken in exercise of a power conferred by Section 16(3):

"Any ... transfer, not being a disposition made in favour of a purchaser ... in good faith and for valuable consideration, shall, for the purposes of this section, be deemed to be ... a transfer operating as a voluntary disposition inter vivos, and ... the consideration for any ... transfer shall not for this purpose be deemed to be valuable consideration where by reason of the inadequacy of the sum paid as consideration ... the transfer confers a substantial benefit on the person to whom the property is ... transfered."

III. as the Adjudicator of liability or non-liability[4] to stamp duties, the Collector is obliged to arrive at conclusions only following a judicious consideration of all facts, circumstances and legal precedents.

The provisions under Section 16(3) correspond with those under Section 27 of the Hong Kong Stamp Ordinance. The Privy Council in considering an appeal arising from the application of the Hong Kong provisions in **Lap Shun Textiles Industrial Company Ltd. v. Collector of Stamp Revenue [1976] 1 ALL ER 833 PC** observed *"... the plain wording of the subsection ... indicates that the tests by which the collector is to be guided are objective. When the section refers to inadequacy of consideration, and when it refers to the conveyances conferring, in the opinion of the collector, a benefit, it is clearly stating factual elements whose existence, or non-existence, appears on the face of the transaction."*: per Lord Wilberforce at pg. 837.

It must appear therefore that before the Collector may exercise power conferred by Section 16(3) he must first ascertain by objective tests that the pecuniary consideration expressed by the instrument represents an inadequate sum. The Act does not contain provisions corresponding to Sections 90(1), 90(2) or paragraph 13 of Schedule 5 of the Income Tax Act 1967.

It had been a previous practice with respect to transfers of unlisted shares upon a sale or gift to require the transferee of a substantial block to submit a statement from the Company Secretary with respect to a past record of transactions in the Company's stock (Form PDS 6) and where the transaction involved a transfer of a controlling interest to require submission of the Auditor's statement on the value of stock. It may, in the light of the foregoing, therefore seem appropriate to seek further discussion with the Lembaga Hasil Dalam Negeri with a view

[4] Provided by section 36(1). The Collector's adjudication is ordinarily conclusive that an instruments is duly stamped.

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to obtain reinstitution of the previous practice at those centres that have adopted an arbitrary practice. It may not now be appreciated that the singular feature of the law on stamp duties is its almost wholly self operating-collecting mechanism and whilst it is acknowledged to effect a tax on change its application was never intended to impede the speed of change. Except where other information is pending, completion of the assessment process therefore should not be delayed unnecessarily. As was further observed by Lord Wilberforce "(The section) cannot require the collector to investigate whether an evident inadequacy, or an evident benefit, is deliberate or intended; such a requirement, if it were to be imposed, would have to be stated in clear words."

2. On Objections

The statutory position is expressed by Section 39(1):

"Any person who is dissatisfied with the assessment of the Collector may, within twenty-one days after the date of the assessment and upon payment of duty in conformity therewith, appeal against the assessment to the High Court, ..."

The Act does not include a provision similar to that stated by Section 101 of the Income Tax Act, 1967. It may therefore seem that the person aggrieved by the Collector's assessment is capable only of seeking judicial review of that assessment. In practice however the stamp centres do not refuse consideration of a reasoned objection: the initial notification of liability eg. as stated in Form PDS 14 normally states that any dissatisfaction with the assessment should be addressed to the Collector within the period specified by the notification of liability. Malik J. in the appeal from Shell observed that this practice appeared to have been adapted after that followed in the UK in the application of the corresponding provision under Section 39 of the UK Stamp Act 1891, as recorded in Atkins Encyclopaedia of Court Forms in Civil Proceedings 2nd Ed., Vol. 34 at pg. 112:

"The practice of the Inland Revenue is to give the applicant a notice of provisional assessment; if the applicant agrees the instrument is stamped with the duty assessed and an adjudication stamp and is then returned to him. If the applicant dissents he should submit a statement of reasons for dissenting and his view of the basis upon which the instrument should be stamped. He may have an interview with the adjudicating officer by appointment if he wishes. Thereupon the final assessment from which the statutory appeal lies, is made."

He accordingly rejected a contention submitted on behalf of the Collector that a person aggrieved by the Collector's assessment was obliged to file both objection and the appeal within twenty-one days after the date of the assessment.

3. On Appeals

Strictly an appeal lies from the Collector's adjudication of liability, that is, the assessment made upon a formal request under Section 36 of the Act. An appeal may nevertheless be lodged against an informal assessment as stated under the "over-the-counter" stamping procedure. The statutory provision under Section 39 confines a right to judicial review with respect to the Collector's decisions on liability only. The Collector's rejection of a claim against duty paid, for example, therefore must stand as final unless the Minister consents to direct revision under powers conferred by Section 78.

A cursory reading of Section 39(1) which further provides that the person dissatisfied "*... may for that purpose require the Collector to state and sign a case, setting forth the question upon which his opinion was required and the assessment made by him.*", may mislead the tax practitioner into assuming that the procedural requirements would be similar to that prescribed by Section 99 of the Income Tax Act 1967. However it is to be noted that appeal lies from the Collector's adjudication of liability and accordingly hearing is by the High Court in the first instance. The procedural requirements therefore must conform with those set by the Rules of the High Court. The process accordingly commences with the filing registration and service of a Notice of Motion under Rule 13 Order 55 to require the Collector to state a case for consideration and decision of the High Court in terms of the specific orders prayed including over costs. The Notice must include the Affidavit of the Appellant and, as stated by Section 39(1) be filed within 21 days after the date of the assessment and upon payment of duty assessed. The Solicitors for the Appellant

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will also be expected to submit an initial draft of the case stated for consideration by the Collector.

Some confusion over the procedural requirements for an appeal from a decision of the Collector was created when the matter was raised before Harun J. (as he was then) in the initial appeal by **Cold Storage (Malaysia) Bhd. [1987] 1 CLJ 261**. He considered that *"... the procedure ... was relevant to practice prevailing in 1950 and should not now be followed"* and went on to state *"The correct procedure for appeals from the Collector to the High Court is as follows:-*

a) *Within 21 days of the date of the assessment and on payment of duty, file Notice of Appeal with the Collector.*

b) *Appellant requires Collector to state and sign a case.*

c) *Collector states and signs case and delivers it to Appellant.*

d) *Within 7 days of receipt of the Case Stated, the Appellant files Originating Motion in the High Court under RHC o.55.r 13 ..."*

The matter therefore was taken before the Supreme Court in the course of the further appeal by **Cold Storage [1988] 2 MLJ 93** which observed (pg. 99) that *"... the Collector of Stamp Duties is merely a civil servant and not legally qualified like an officer of the Judicial and Legal Service. He may have difficulty in drafting a case stated without legal assistance."* It considered *"... as valid today as it was 37 years ago"* the statement by Taylor J. in the **Cheong Yok Choy case [1950] MLJ 276**:

"The general practice is for the appellant's legal advisers to make the first draft of the case and send it to the respondent's advisers for their consideration, after which it is submitted to the presiding officer who alone can settle accurately that part of the document which expresses his findings of fact and his opinion on the points requiring decision.

.....

The essence of a case stated is a joint statement by all three of the facts and of the outstanding issues, so that the appellate court has the whole matter before it in the most concise form ..."

Surprisingly that endorsement of practice did not mark the final closure in the matter of arguments over procedural requirements. In the Shell case a further preliminary objection raised on behalf of the Collector was "... that the appeal was incorrectly worded as it did not reflect the question of law that was desired to be adjudicated upon by the High Court. That objection was rightly dismissed: Malik J noting that *"the applicant may have obtained the co-operation of the Collector of Stamp Duty ... to state and sign a case for the opinion of the High Court, setting forth the question upon which the Collector's opinion was required and the assessment made by him."* He accordingly held that *"... this preliminary objection is nothing but a storm in the teacup ..."* Hopefully the matter now stands finally resolved.

4. On Claims

A limited right to recover stamp duty paid is permitted under Sections 21, 57 and 58 of the Act. This limitation reinforces the necessity to be exacting and certain as to one's intention and capacity in proceeding with the execution, acceptance of delivery and due stamping of a chargeable instrument. The instance of a "change-of-mind" case, as when a legal charge is stamped but the mortgagor unilaterally withdraws from completion of the loan transaction or as when a transfer instrument is stamped but the transferee seeks re-negotiation of the terms of transfer, by virtue of that limitation therefore stands automatically struck out.

The admissible circumstances are as:

(a) per Section 57 (f), when the instrument is found to be:

I. void from the beginning; or

II. `unfit for the purpose originally intended by reason of an error or mistake therein; or

III. by reason of the inability or refusal of a necessary party to sign the same, incomplete and insufficient for the intended purpose; or

IV. by reason of inability or refusal of a person to act under the same or to register it within the time prescribed by law, void or incapable of effecting the intended purpose; or

V. either replaced by a similar duly stamped instrument made by the same parties for the same purpose, the original having

NAKED AND UNASHAMED!

Prepared by: **Richard Thornton**

The case of Richard Walter Pty Limited ("Richard Walter"), heard before the Full Federal Court of Australia in Sydney (1996) (MSTC 9,063), concerned the effects of an "essay in tax avoidance naked and unashamed" (vide Re Weston's Settlements (1969) 1 Ch 223). Its interest to us here in Malaysia is due to the similarity between the general tax avoidance provisions of both countries, the former s.260 of the Australian Act and the present s.140 of the Malaysian Income Tax Act. Judicial interpretation of the Australian version, although slightly different, has often been used as a basis for interpreting the Malaysian provision.

However, the Richard Walter decision seems to be typical of what seems to be a different approach to tackling tax avoidance. It has never been easy for the tax authorities to justify the use of a general anti-avoidance provision but, if the onus can be put upon the taxpayer to defend his appeal against an assessment, many complicated arguments can be avoided, in theory at least. Although s.260 was considered in the hearing before the lower Court, it was virtually brushed aside by the Full Federal Court by proceeding on the basis that if the taxpayer could not discharge the primary onus of proof on him to show that assessments on him in respect of certain receipts were not income, the assessments would stand.

BACKGROUND

Richard Walter, the taxpayer, was the 'group finance company' in a group of companies deriving much of its income from pathology services. Doctor Wenkart, the 'governing mind' of the group, was said to have had an aversion to paying tax and had taken steps to reduce tax on the pathology profits more than once, but the particular arrangements which resulted in the case under review were entered into just a few days before 27th May 1981, when s.260 was succeeded by different anti-avoidance provisions in Part IVA of the Australian Act. Before the 1981 arrangements, the group structure had been as in "Appendix A". After the 1981 arrangements, which comprised no less than 15 different steps and involved foreign companies and trusts, the group looked like "Appendix B".

The restructure was carried out under the guidance of tax accountants and lawyers whose aim was to ensure that the pathology profits would substantially pass through to an entity (Aurelius Commodus Investment B.V., incorporated in the Netherlands) which it was hoped would be entitled to claim an exemption from Australian income tax on moneys distributed to it on the basis that it did not carry on any business in Australia in or at a permanent establishment in Australia by reason of article 7 of the double tax treaty between Australia and the Netherlands.

Moneys continued to flow to Morlea Professional Services ("MPS") as before and , as before, MPS continued to pass on those moneys to Richard Walter by way of "loan". However, tax had been avoided and the Commissioner of Taxation assessed Richard Walter to income tax in respect of the amounts passed to it by MPS. Richard Walter duly appealed.

It was the Commissioner's case that the payments, which were recorded as loans in the books of account of both the partnership of which Morlea was said to have been agent and Richard Walter, were not what they purported to be. He submitted that the Court should hold that the loan arrangements were shams. After much discussion as to what is a "sham", Hill J. proceeded to define it as "a common intention between parties to the apparent transaction that it be a disguise for some other and real transaction or for no transaction at all".

THE EVIDENCE

Only one witness was called for the taxpayer, a Mr. Holden, the financial controller for the group who presented his evidence by way of affidavit and was cross-examined by the lower court. Doctor Wenkart, the 'governing mind' of the group, would have been in a position to offer valuable testimony but he was not called as a witness. Mr. Holden obviously made a poor impression on the judge who commented ".....I do not accept Mr.

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Holden as a reliable witness in relation to this matter and would accept his evidence only where it is corroborated by credible testimony or evidence or where objective circumstances make his version more likely". The judge was unfavourably impressed by Doctor Wenkart's failure to appear as a witness.

Not only that, the judge then proceeded to discredit Mr. Holden's evidence point by point and pronounced "My conclusion is that the purported 'loans' were simply a false label given in order to mask the real transaction intended by the parties, which was the transfer of the beneficial ownership of moneys to Richard Walter free of any obligation to repay. The nomination of the payments as a loan was calculated to make the true transaction appear as something it was never in truth intended to be. Accordingly, I find that the loans were shams and that the reality of the situation was that Richard Walter received the beneficial ownership of the moneys without any obligation to repay".

At Full Federal Court level, the question of what is a sham and whether the loan arrangements should be treated as a sham assumed less importance; Hill J. "As I have already sought to demonstrate, it was not necessary for his Honour to determine by reference to sham in the sense of holding that the so-called loans were but a disguise for some other transaction. It was sufficient for his Honour to hold that the payments to Richard Walter were not loans. Once that finding had been made the question would then arise whether Richard Walter had satisfied the onus upon it of showing that the payments were not income.".

The higher Court refused to disturb the finding of the lower Court judge as to the unreliability of Mr. Holden as a witness and, in the absence of any other evidence, seemed to be prepared to accept that the payments from MPS to Richard Walter were not loans. At this point concentration centered on the assessments under appeal and the onus of proof - "It cannot be correct to say that the onus lay upon the Commissioner to establish what the payments were. If they were not loans it will be for the taxpayer then to show that they are something else which does not have the character of income. If the taxpayer does not do this it will not have satisfied the onus of showing that the assessment is excessive".

THE DECISION

If the receipts by Richard Walter were not loans and the taxpayer could not prove that they did not have the character of income, were they income of its business as a finance company? - "If Richard Walter wished to assert that the amounts in question should not be treated as profits of Richard Walter being a finance company, then the onus lay upon it to show that the payments were not properly to be seen as profits made in the course of its business activity or incidental to its business activity. But once the evidence of Mr. Holden had been disbelieved and the accounts can no longer be relied upon, there is no evidence one way or another on the question. In short, Richard Walter failed to show, on the balance of probabilities, that the payments to it by Morlea were not assessable income, with the result that it failed to show that the Commissioner's assessment was excessive".

Having concluded that the receipts by Richard Walter fell to be treated as income, s.260 was dismissed in the following terms - "But if the payments to Richard Walter are to be accepted as income it is impossible to see how the incidence of income tax (at least so far as it affects Richard Walter) is altered in any way favourable to it. The answer is, it is not. Nor is Richard Walter relieved from any liability to pay tax, nor is any liability which is imposed upon it in any way defeated, evaded or prevented. Quite the reverse: the Act operated in the way intended, namely, to bring to tax upon Richard Walter as income".

QUANTUM OF ASSESSMENTS

Having reached its majority verdict, the Court was then faced with the difficulty of deciding on the quantum of the assessments. Over the period concerned the receipts from MPS had amounted to $11,805,258 but at the end of the period the total had been reduced to $6,009,535 by repayments to MPS. The assessments had totalled $9,395,089. These small problems were resolved in the following terms - "Although I have some sympathy for the approach adopted by counsel for Richard Walter, it does not ultimately accord with the findings made by his Honour. If the payments made to Richard Walter each few days were in fact not loans, then the fact that some amount was paid by Richard Walter to (MPS) could not

Prepared by: Richard Thornton

operate logically to reduce the assessable income of Richard Walter. The Commissioner does not suggest that we remit the matter to him to increase the assessment. In these circumstances the conclusion that Richard Walter has not satisfied the onus of showing that his assessable income was not greater than that assessed has the result that the assessment of taxable income must be affirmed".

THE DISSENTING JUDGMENT

In his dissenting judgment, Lehane J. found for the taxpayer. Disagreeing with the majority view on all points made in relation to the "loans" by Mr. Holden's affidavit, he concluded that they must be treated as loans - ".....given my comments about each individual indication, the sum of them in my view suggests no more convincingly that there be no obligation to repay than does any of them individually. Moreover, it must be borne in mind that it is of the essence of a structure intended to be effective to minimise tax that it be created by means of real transactions, giving rise to real rights and obligations, however "artificial" they may be, in the sense of being incapable of rational explanation except on the basis of their tax consequences".

His observations on the fact that MPS had been repaid a part of the "loans" is interesting - "It may fairly be commented.....that either the payments by MPS to the taxpayer were made on the basis that they were repayable by the taxpayer , or they were not. There could be no suggestion that they were repayable in part, the part being represented by the amounts that were in fact repaid. Either the payments back were made in discharge of an obligation to repay, or they are to be explained on some other basis, none being suggested. If the payments indicate anything relevant, I think they can only be taken as some indication that a repayment obligation was indeed intended. It may be added that no expectation, or intention, that full repayment would not be called for, or made, in the foreseeable future does not demonstrate a lack of intention to create a legally enforceable debt".

APPLICATION OF s.260

Having differed from his colleagues by concluding that the payments by MPS to Richard Walter were loans, Lehane J. was then obliged to give some consideration to s.260. It was accepted that the section applied to certain of the transactions but with limited effect - "There is no doubt that we are bound by the proposition that s.260 only effects a "fictitious annihilation of contacts, agreements and arrangements" and does not "proceed to substitute an alternative basis on which tax should be calculated" or authorise a "hypothetical reconstruction" of transactions" (quoting John v. F.C. of T. (1989) 166 CLR 417 etc.). There is no provision allowing for a transaction to be "varied" as there is under the Malaysian Act. He then went on to consider the finding of the lower court.

The lower court had found that - ".....the loans were part of the scheme. They had the required purpose of avoiding or altering the incidence of tax. The loans are avoided by the application of s.260 as are the other parts of the scheme set out.....in steps 1-5.....as identified by the Commissioner. Once the loans are disregarded the situation is that Richard Walter has received the moneys from (MPS) without any obligation. For reasons given earlier I consider that the moneys were assessable income in the hands of Richard Walter".

Commenting on this finding, Lehane J observed:

"By that his Honour meant, I think, that once s.260 had annihilated the loans, what was left exposed was a circumstance where the taxpayer had received a series of substantial payments beneficially and without any obligation to repay them so that the payments thus received were to be regarded as assessable income in the same way, and for the same reasons, as they would have been had the loans been correctly categorised as shams.

The difficulty with that, it seems to me, is that one cannot in this context consider the loans in isolation. His Honour accepted, and so much at least seems to be clear, that other elements of the restructure were avoided as against the Commissioner by s.260, whether or not the loans were avoided. On appeal, the Commissioner did not suggest that the loans should be regarded in isolation. Instead counsel for the Commissioner sought to support his Honour's conclusion on the footing that, the loans being avoided as against the Commissioner, what was exposed was the receipt by the taxpayer of regular payments.; and those payments were to be given the character of as-

Prepared by: Richard Thornton

sessable income of the taxpayer because, the taxpayer being a discretionary beneficiary of the Aborda Trust, and as the payments could not be explained as loans, the only proper inference was that MPS, as trustee, had acted lawfully and had properly distributed the payments to the taxpayer as beneficiary of that trust".

At this point he focused on a fact which will be obvious from a study of Appendix B. Aborda was only entitled to 5% of the income from the Morlea Trust and Richard Walter was only one of a number of discretionary beneficiaries of Aborda. How *then could you attribute all of* the income to Richard Walter?. - "If one treats as annihilated the formation of the partnership and the appointment which actually was made, it is impossible to see revealed a situation where Aborda Pty Ltd was appointed alone as a beneficiary of the Morlea Trust. Likewise with steps (3), (4), and (5); ....to strip them away does not reveal Aborda as the recipient of the whole of each distribution. To assert that Aborda is to be treated as having received the whole is, I think, to substitute fiction for fact..... That being so, it seems to me that the basis suggested by the Commissioner for treating the taxpayer as entitled to what, but for s.260, would be the entire net income of the Morlea Partnership (or asserting that the taxpayer must be taken to have received the money, in fact lent to it, as distributions of the income of the Aborda Trust to which it was presently entitled) must necessarily fail. I can see no other way in which the assessments can be supported by an application of s.260, and none was suggested. It follows that the assessments cannot be supported on the basis of the operation of that section".

COMMENTS

The approach adopted by the Full Federal Court is a pragmatic and sensible one and, except in one respect, the final outcome seems to be satisfactory. General anti-avoidance provisions should only be brought into play when there is no other alternative. To place the onus on the taxpayer to show that contentious receipts do not represent income, when there has clearly been an attempt at "tax avoidance naked and unashamed", is practical and lawful. However, we find that Lehar J's reasoning on the availability of evidence to show that the payments in question were loans rings more true than the cavalier disregard of the witness's testimony by the lower court and by the majority decision in the higher Court.

It is interesting to compare this case with that of SB Sdn Bhd (PKR 536) reported in Tax Nasional, June 1996 at p.10. Although proceeding on the basis of an application of s.140 by the Director General, the Special Commissioners found that the payments in question did not constitute gifts as claimed by the taxpayer and stated that their ruling, on its own, was sufficient to make a determination. Another example, perhaps, of the possibility of using a 'different approach' to tax avoidance.

QUOTE

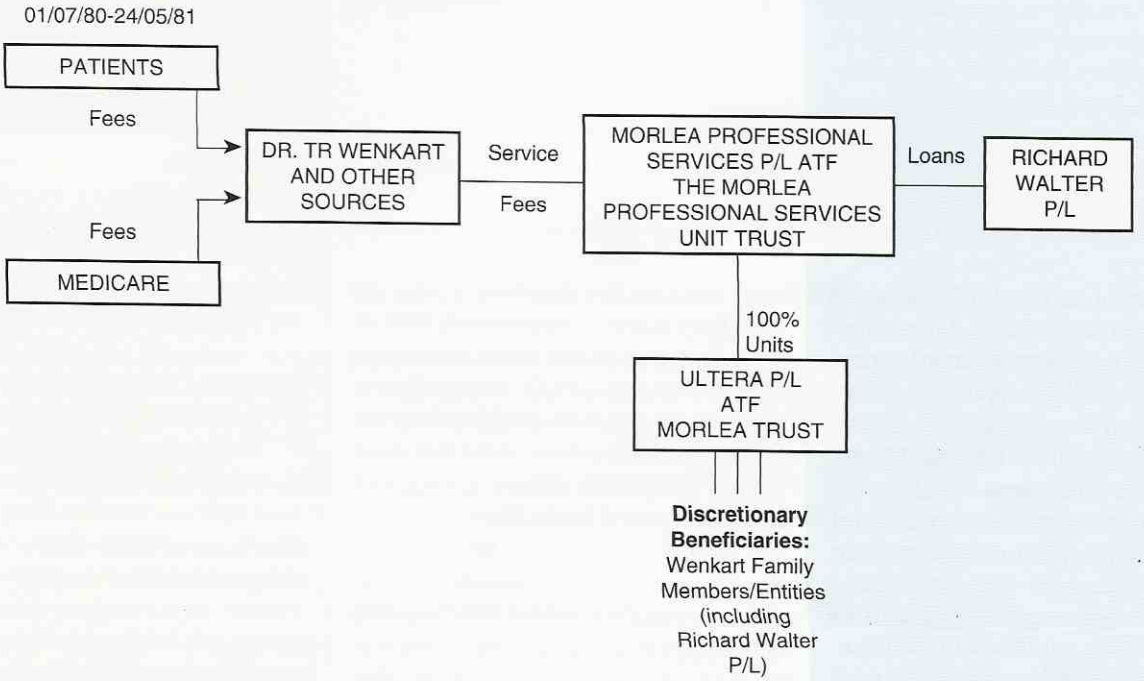
If you do the little jobs well,
the big ones will tend to take care of themselves.

Dale Carnegie

Prepared by: Richard Thornton

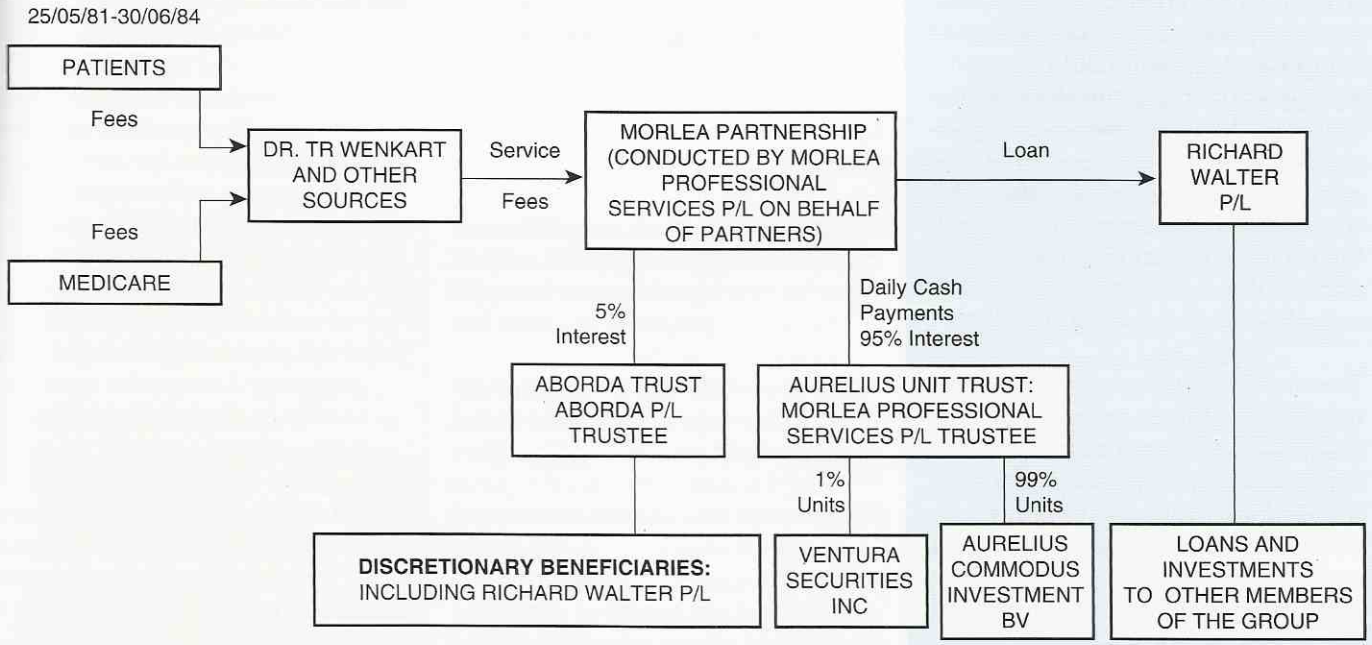
APPENDIX A

THE PRE-1981 STRUCTURE



APPENDIX B

THE 1981 STRUCTURE



Withholding tax on professional fees - Is the Revenue giving due respect to the Double Taxation Relief Orders?

Written by: **Ronnie Chia, Tax Manager, Land & General Berhad**

The deduction and withholding of 10% of payments in respect of professional fees for the provision of expert advice such as legal, taxation, property valuation, auditing, architectural and the like is taken for granted by many Malaysians when making such payments to non-residents that do not have permanent establishments in Malaysia. Many of us deduct the withholding tax because we were told to do so by our tax advisers and indeed, we do, without giving much thought to the laws that govern the withholding tax deduction or its implications to the recipient. Having said that, there are also many who do not make the 10% deduction, either through ignorance or oversight. It could prove to be expensive as the penalties for non-compliance are severe. I cannot understand why certain companies/taxpayers in Malaysia do not bother to comply with the withholding tax provisions as the tax is not theirs in the first place. Maybe it's because the non-residents insist on receiving the amount billed net of tax. But why should the Malaysian taxpayer expose themselves to penalties and disallowance of the expenditure? The tax is nobody else's but the non-residents'.

To many non-residents, the withholding of 10% of their professional fees puzzles them. Overseas lawyers and accountants that provide services to the company where I ply my trade is, more often that not, surprised (and probably, annoyed) that the company pays them only 90% of the professional fees billed. I have to answer their queries (far too frequently) on how they come to receive only 90% of their fees and at the same time may not receive a tax credit in their home country for the 10% withholding tax paid to the Malaysian Inland Revenue Board ("MIRB"). Many foreigners have expressed their displeasure on the way the Malaysian Revenue refuses to acknowledge the treaty benefits provided for under the business article.

Let us examine the provision that gives rise to the confusion.

In 1983, the Government of Malaysia announced the introduction of section 4A to the Income Tax Act 1967 ("ITA"). Section 4A, as it reads today, is as follows:-

"Notwithstanding the provisions of section 4 and subject to this Act, the income of a person not resident in Malaysia for the basis year for a year of assessment in respect of -

(i) amounts paid in connection of services rendered by the person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person;

(ii) amounts paid in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;

(iii) rent or other payments made under any agreement or arrangement for the use of any moveable property,

which is derived from Malaysia is chargeable to tax under this Act."

Section 4A is clearly intended to impose income tax on non residents receiving payments from Malaysia. Under normal "source" rules, a non-resident will be considered to derived his income from or in the place where he carries out such activities to earn the said income. However, in Malaysia, the ITA ***deems*** section 4A income to be derived from Malaysia (a territorial basis) if any one of the following three conditions is met -

(i) if responsibility for payment lies with the Government or a State Government;

(ii) if responsibility for the payment lies with a person who is resident for the basis year; or

(iii) if the payment is charged as an outgoing or expense in the accounts of a business carried on in Malaysia.

The MIRB's position is that such fees will be subject to withholding tax of 10%, which is based on the gross amount of the payments. Is the MIRB's view that such professional fees are

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technical in nature correct in law? It has been argued that the MIRB's view on the scope of section 4A(ii) is not consonant with the legal interpretation of the words in that section. That is to say, in order for section 4A(ii) to be applicable under its legal construction, the services rendered by the non-resident must be technical in nature as well as in connection with the technical management or administration. To a layman, a technical service is usually associated with engineering or science, not accounting or law. This difference in opinion, however, is a legal issue which I shall not dwell upon in this paper.

For argument sake, let us assume that the fees for professional services provided by lawyers, accountants and the like are subject to Malaysian income tax under section 4A(ii). Failure to account for the withholding tax within the stipulated time will result in a penalty on the payer. The penalty is indeed harsh, 100% of the withholding tax to be paid.

The MIRB have also taken a position that relief under double taxation agreements ("DTA") will not be given unless, of course, there is a technical fees article in the DTA. The question often asked is why the non-resident cannot rely on the business article in the DTA to seek relief from the Malaysian withholding tax. After all, the provision of such professional services constitutes the non-resident's business and hence, the income should rightly be classified as business income or profits.

To understand the stand taken by the MIRB, we would need to look at section 4A again. Section 4A begins with "Notwithstanding the provisions of section 4....". This would mean that section 4A, if it applies, will render section 4 inoperative. I would think it is appropriate to reproduce section 4 at this moment. Section 4 states -

"Subject to this Act, the income which tax is chargeable under this Act is income in respect of -

(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 premiums;

(e) pensions, annuities or other periodical payments not falling under any of the foregoing paragraphs;

(f) gains or profits not falling under any of the foregoing paragraphs."

Gains or profits from a business is chargeable to tax under section 4 and not under section 4A. If the payment falls under section 4A(ii), then section 4(a) will not be applicable. Hence, under domestic law, the non-resident is considered to be deriving a special class of income from Malaysia and not business income even though the provision of such professional services is in fact its bread and butter i.e. its business. The MIRB has maintained that since the payment is a special class of income and not business profits, the business article in the DTA will not be applicable. I wish to put forward this simple question - "Is this really correct?"

There are two notable court cases in Malaysia that deal with the applicability of DTA. We shall examine each one of them in detail.

The first case is that of Director General of Inland Revenue v EIL. (1980 - 1985) MSTC 256. EIL is a company incorporated in the United Kingdom and in 1973, it entered into an agreement with a Malaysian company to set up EISB in Malaysia. The said agreement provided, inter alia, for EIL to appoint three directors to the board of EISB and for these directors and other EIL employees to provide managerial, planning, training, technical, operational, marketing and development services to EISB. In return, EISB paid a fee to EIL. The Director General regarded the payments as royalties and assessed the same to tax. The Special Commissioners confirmed the assessments but was overturned by the High Court.

It was agreed by both appellant and respondent that the payments were management fees which were paid to a company resident in the United Kingdom which has no permanent establishment in Malaysia. It was also agreed that the payments would come under the definition of "royalty" under section 2 of the ITA but not within the definition of the royalty article in the DTA.

In delivering his decision, the learned Judge in the High Court considered section 132(1) of the ITA and the business article of the relevant DTA.

Section 132(1) reads -

"If the Minister by statutory order declares that -

(a) arrangements specified in the order have been made by the Government with the government of any territory outside Malaysia with a view to affording relief from double taxation in relation to tax under this Act and any foreign tax of that territory; and

(b) it is expedient that those arrangements should have effect,

then, so long as the order remains in force, those arrangements shall have effect in relation to tax under this Act notwithstanding anything in any written law."

Clause 1 of the business article in the Malaysia-United Kingdom DTA pro-

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Withholding tax on professional fees - [illegible] the Revenue giving due respect to [illegible] Double Taxation Relief Orders"

vides -

"The income of profits of an enterprise of one of the Contracting States shall be taxable only in that Contracting State, unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, tax may be imposed in that other Contracting State on the income or profits of the enterprise but only so much thereof as is attributable to that permanent establishment."

The learned Judge decided that in the event of a conflict between domestic law and the provisions in the DTA, the provisions of the DTA would override those in the ITA. In this connection, he went on to say that because the definition of the term "royalties" in the royalty article of the DTA does not apply, then any income of EIL is taxable only in the United Kingdom, by virtue of the business article, since it does not carry on business in Malaysia through a permanent establishment. The Revenue appealed to the Federal Court and judgement was delivered on 2 April 1983 where the appeal was dismissed.

The Revenue argued in the Federal Court whether the High Court Judge, having found that the sum in dispute was royalty within the definition in the ITA, could still hold that because the definition of "royalties" in the royalty article of the DTA did not apply, the business article would be applicable. To this, Wan Suleiman F.J. has this to say -

"It appears to us that the learned Judge never intended it to be understood that he had found the management fees to be royalty under section 2 of the Act. What he obviously means is that whilst the parties agree that the fees does appear to come under the definition of "royalty" under that section, it does not come within the definition of that term in the Relief Order, and that because under sec. 132(1) of the Act in the event of conflict the provisions of the Relief Order should prevail, the fees should be treated as income or profit and not as royalty."

The second case which we will discuss is WW (S) Pte Ltd v Director General of Inland Revenue (1986 - 1990) MSTC 3146. This case involves WW (S) Pte Ltd, a Singapore company which is involved in the business of hiring out cranes for profit in the island republic. It is resident in Singapore and has no permanent establishment in Malaysia. For a couple of years, it received income from the letting of cranes to WW (M) Sdn Bhd for use in Malaysia. The appellant was assessed to income tax in Singapore in respect of the income received in Malaysia on the basis that it is business income. The Malaysian Revenue raised assessments for the income received from Malaysia on the basis that the income was rental income chargeable to tax under section 4(d) of the ITA.

L.C. Vohrah J. in the High Court applied the Privy Council case of ALB Co. Sdn Bhd v D.G. of I.R. (1950 - 1985) MSTC 33 where in that case it was held that rental income, despite the fact that it is referred to specifically in section 4(d), may nevertheless constitute income from a source consisting of a business if it is received in the course of carrying on a business of putting the taxpayer's property to profitable use by letting it out for rent. The Judge found that the hiring out of the cranes represent the lifeblood of the business and hence the payments received from Malaysia constituted business income in the hands of WW (S) Pte Ltd.

The Judge expounded -

"So the question I now have to address is whether the express provisions of para. 2 of Art. VIII of the DTA can be called in aid by the respondent to displace this characterisation according to the overlapping principle in order to bring into charge for Malaysian tax the said income on the ground that it is royalty although on the basis of the overlapping principle it is business income which is clearly not chargeable to tax by reason of para. 1(a) of Art. IV.

The ITA is a taxing statute, an Act of Parliament for the imposition of income tax. The DTA brought into effect by the Double Taxation Relief Order (Singapore) Order 1968 is an agreement for the avoidance of double taxation and prevention of fiscal evasion in respect of taxes on income. There is no question in this case of fiscal evasion. I agree with counsel for the appellant that the nature of the income has to be determined by the ITA and the law which charges it to tax also has to be the ITA and that only once these factors are established according to domestic law can the DTA be resorted to in order to determine whether relief is available. Relief in this case is then clearly afforded by Art. IV so long as the said income is regarded as business income under sec. 4(a). I therefore find myself unable to accept the contention of counsel for the respondent that the said income is chargeable to tax in Malaysia by reason of Art. VIII on the ground that it constitutes "royalties" within the definition contained in para. 2 of that Article, ... To do so would be not only to utilise the DTA to change the character of the said income from business income to that of royalties but also to treat the character of the DTA as that of a charging or taxing statute instead of an agreement for relief against taxation."

The above cases established the following:-

(i) The ITA is the only set of laws that can be used to imposed a tax on a person. One has to establish un-

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der which limb in the ITA the income is to be charged to tax. Once determined, the DTA can be called in aid to provide relief from taxation. If the DTA provides that the income is to be exempt from tax in Malaysia, then there is nothing the MIRB can do about it. The Revenue cannot rely on other provisions of the DTA to change the character of the income (already determined under the ITA) to one that no relief is accorded and thereby, impose Malaysian income tax on that income.

(iii) When there is a conflict in the definition or interpretation of certain terms in both the ITA and a DTA, the provisions of the DTA will prevail by virtue of section 132(1). For example, if a particular income appear to fall under the definition of "royalty" in the ITA but does not fall within the definition of "royalty" in the DTA, then the definition in the DTA shall override that found in the ITA.

Earlier on, I mentioned that the MIRB has taken the stand that the business article in the DTA concluded by Malaysia shall not apply to income charged to income tax under section 4A. It appears that the Revenue is applying the rule that a particular income has to be determined under which limb it is chargeable to tax under the ITA before applying the DTA to seek relief, which is not dissimilar to the WW (S) case. I would agree with this analysis if there is not conflict as to which classification the said income falls into in both the ITA and the treaty. As section 4A came into being in 1983, many DTA entered into by Malaysia do not take into account these special classes of income. The MIRB has taken the opportunity to disallow any treaty benefits on section 4A income saying that no relief can be given since there was no specific article in the DTA. What the Revenue has failed to see is that the business article can be called in aid, more so when there is no specific article dealing with the particular income.

What we need to remind ourselves is that in the WW (S) case, there was no conflict in the interpretation between the ITA and the treaty. I believe that the WW (S) case showed the Revenue that the provisions contained in a treaty cannot be used to change the character of the income so that income tax may be imposed. What it does not say is that no relief can be given if an income which is taxable under the domestic law cannot be found in a specific article in the DTA. This does not mean that an income cannot fall under the business article (when there is no specific article) even though it may be classified as non-business income under domestic legislation. When there is a conflict, the DTA will prevail - meaning that the said income will be considered as business income.

More often than not, enterprises that provide professional services to clients in Malaysia do so as part and parcel of their normal course of business. Hence, non-residents should rightly feel, shall I say, disappointed when the MIRB disallow them treaty benefits under the business article. The business article that can be found in most Malaysian DTA will contain a provision similar to clause 1 of the business article in the Malaysia-United Kingdom (which has been reproduced above) as well as the provision stating that where any item of income is dealt with separately in another article in the DTA, the provisions of that article will not be affected by the provisions of the business article.

In the older treaties, section 4A income is not covered at all and the income should rightly fall under the business article of the DTA if the income represents business income to the non-resident. Whether the income is classified in the ITA as business income or otherwise should not matter as the courts have established that provisions in a treaty overrides the domestic legislation in the event of a conflict. The situation between section 4A and the business article is clearly a case of different interpretation similar to the case in Director General of Inland Revenue v EIL. Here, we have a payment that appears to fall within the definition of special classes of income under section 4A of the ITA. However, there is no such definition in the DTA. And if the payment received constitutes business income or profits to the non-resident, the business article should rightly be applied.

We should not forget that section 4A is to be read subject to section 132(1). Section 4A states "Notwithstanding the provisions of section 4 and ***subject to this Act,...***" while section 132(1) reads "....those arrangements ***shall have effect in relation to tax under this Act notwithstanding anything in any written law.***" The emphasis is mine.

When the Revenue lost the EIL case in 1983, the Government moved expediently to introduce section 4A. Section 4A (i) and (ii) are essentially para (c) and (d) of the royalty definition found in the ITA (which was the subject to scrutiny in the EIL case) that was repealed as a result of the introduction of section 4A. The Revenue thought that by having the professional fees classified as a special class of income, it would not fall into the trap of the fees being classified as business income under the DTA. I do not share the same view. It may be that while such fees when paid to a non-resident having no permanent establishment in Malaysia may never be classified as business income under the ITA, the fees may still be classified as business income under a treaty in accordance to the principle laid down in the EIL case.

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Section 4A is not immune to the treaty provisions as section 132(1) provides that the treaty provisions are to take effect notwithstanding whatever may exists in any written law in Malaysia. This is to say that although a particular income, being business income to the non-resident and treated as such in his home country, may appear to fall under section 4A of the ITA, it will, nevertheless, fall under the business article provided that there is no other article in the treaty that deals with that particular type of income. Treaty benefits should then be applied accordingly. It would appear that the Malaysian Revenue have breached the provisions contained in the very same agreements that the Government has agreed upon with other countries' governments.

The new treaties entered into by Malaysia incorporates a technical fees article which covers fees for professional services. There is no dispute as far as these treaties are concerned as the specific article on technical fees would override the business article. The trend appears to be that all fresh negotiations and renegotiations on treaties would include the technical fees article. Once all the treaties have the technical fees article, then no disputes will arise and the MIRB will have gotten away scot-free from breaching treaty provisions if no one has challenge the Revenue in court on the matter.

To argue that the treaty does not cover section 4A income as section 4A was only introduced after the treaties were concluded is, to my mind, ridiculous. This is because the DTA seek to provide relief from income tax and the type of tax imposed under section 4A income is income tax. It does not matter if the domestic legislation at a later point in time charges certain income to income tax. Article 1 of the DTA concluded by Malaysia sets out the taxes that are the subject of the relief order. The type of taxes covered, in the case of Malaysia, are income tax, the supplementary income tax and the petroleum income tax which are collectively known as "Malaysian tax" in the agreement. The tax charged by section 4A income is income tax. The manner in which the tax is collected, which is at source, and the date it was introduced do not alter the fact that it is still an income tax and because it is income tax, it should be covered under the DTA and relief given accordingly.

It is time that the MIRB gives due respect to the provisions of the DTA that the Malaysian Government has concluded with other countries and not to impose tax or not allowing treaty relief at its whim and fancy. We all know that the process of challenging the Revenue on their current stand on withholding tax on professional fees is a long and tedious process. As such, many non-residents are not willing to take the matter up to higher authorities.

So, I guess that the only way is for the Revenue itself to review its position on the matter. I fully agree that the MIRB should strive to be a good collector of revenue for the Government but in its quest for more revenue must not forget to be seen as a fair and just tax office. It must apply the law in a fair manner and abide by Special Commissioners and court decisions. It must not take the view or adopt a position that most suits them. This is very important in the eyes of the world as a covert Revenue will hamper foreign investments and our nation's progress.

This Revenue practice has resulted in may Malaysian taxpayers picking up the withholding tax themselves since the non-residents insist on their payment to be made net of withholding tax. At the end of the day, it is the Malaysian taxpayers that lose out and be less competitive in a market place where efficiency and cost containment are essential ingredients for success.

QUOTE

The ultimate measure of man is not where he stands in moments of comfort and convenience but where he stands during challenge and controversy.

Martin Luther King

Leasing Industries - A call for reform

(following the decisions of SL Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri and D Leasing Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri)

By: Choong Kwai Fatt, Tax Lecturer, Faculty Business of Accounting, University of Malaya

INTRODUCTION

Ever since the Income Tax Leasing Regulations 1986 were gazetted on 8 April 1986, the dispute between taxpayers and the tax authorities over the basis of allocation of expenses and capital allowances between leasing business and non-leasing business, has never ended.

The tax authorities have adopted the "gross income" approach as a basis for allocation in practice while the taxpayers are of the view that the equitable basis should be based on "portfolio balance" of each category of debtors. The accounting profession as well as the Equipment Leasing Association of Malaysia (ELAM) have in numerous dialogues urged the tax authorities to issue a guideline on this but todate, there has been no such issue.

The Special Commissioners have however decided in SL Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (PKR 664) on 3 March 1997 and D Leasing Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (PKR 663) on 11 March 1997 that the "gross income" basis adopted by the tax authorities has a legal basis. The impact of this decision has serious implications for the leasing industry. This article will examine the Special Commissioners decision and also propose a possible reform to minimise such impact.

HISTORICAL BACKGROUND

1. **Income Tax Leasing Regulations 1986 (ITLR 1986)**
   Where a company has gross income from a 'business which consists of leasing transactions and other activities', the gross income from the lease transactions shall be deemed to be a separate and distinct business source from other activities of that company. (Regulation 2, ITLR 1986)

   The distinction of separate business sources would result in not permitting transfer of capital allowances in relation to the leasing business to the other business source. The lessor would be entitled to claim capital allowances on plant and machinery which he leased out to lessees for the leasing business because he has incurred capital expenditure on the acquisition of plant and machinery.

   The gross income from the leasing business would be the lease receivables in the basis period for a year of assessment. (Regulation 3 ITLR 1986). It should be noted that the lease rental receivables consist of an element of principal repayment plus interest.

2. **Hire purchase business**
   It is not uncommon that a leasing company should also undertake hire purchase besides the leasing business. In a hire purchase scenario, the gross income recognised by the company would only be interest income. The company would not enjoy capital allowance as the company would not be the owner of the "hire purchase asset".

3. **The dispute**
   The basis of the allocation of common expenses (interest and overhead costs) as well as capital allowances (for common assets) between the leasing business and the hire purchase business is in dispute. There is no specific provision in the Income Tax Act 1967 (the Act) to prescribe the manner of apportioning common expenses and capital allowances.

   The tax authorities have adopted the gross income approach for the allocation, while a leasing company would use the portfolio balance of each category of debtors. The rationale for the leasing company is that both leasing and hire purchase are "fund based operations". The same amount of funding will be required to acquire an asset for lease or hire purchase. As such, it would be natural to allocate the expenses in accordance to the portfolio asset maintained by the leasing company.

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A table summary will illustrate the difference between leasing and hire purchase business :-

	Leasing Source	Hire Purchase Source
Gross income recognised for		
(i) income tax purposes	Lease rental receivable	Interest income
(ii) accounting purposes	Interest income	Interest income
Basis of allocation for common expenses		
(i) Tax authorities	Taxable gross income (Lease rental receivable)	Taxable gross income (Interest income)
(ii) Adopted by leasing company in the tax Computation	Interest income	Interest income
Impact of the IRB method	Higher expenses would be allocated to leasing source	Small portion of expenses are allocated to Hire purchase
	Lower Adjusted income	Higher adjusted income

The gross income basis does not seem to allocate an equal weight to expenses. On one hand, the lease rental recognised for the leasing business source consists of both principal repayment as well as interest element whilst the gross income for hire purchase consists only of the interest element. With the gross income basis, expenses which have been incurred for the production of hire purchase income had been arbitrarily set off against leasing income.

In the writer's opinion, the modus operandi of the businesses, need to be considered. Since these are fund based operations, it is appropriate to adopt the portfolio basis for allocation. This basis however has never been accepted by the tax authorities.

SPECIAL COMMISSIONERS HEARINGS

1. SL Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

SL Sdn Bhd was engaged in the business of lease financing, factoring and hire purchase. The company was unable to specifically attribute the exact amount of common expenses and capital allowances to its leasing and non-leasing businesses respectively. As such, the common expenses and capital allowances had to be apportioned.

The tax authorities applied a formula employing the gross income basis:

$$\frac{R[N]}{R+N} \times D$$

R = Gross income derived from leasing business (principal + interest)
N = Gross income derived from non leasing business (interest)
D = Allowable common expenses, financing cost and capital allowances on fixed assets

The company however contended that the formulae for apportionment of the common expenses, financing cost and capital allowances on fixed assets should be fund based viz.

(i) leasing business

$$\frac{A}{A+B+C} \times D$$

(ii) non-leasing business

$$\frac{B+C}{A+B+C} \times D$$

Where
A = Interest income derived from leasing business
B = Interest income derived from hire purchase business
C = Interest income derived from factoring business
D = Allowable common expenses, financing cost and capital allowances on fixed assets

The issue put before the Special Commissioners was whether the method adopted by the tax authorities in the apportionment of common expenses and capital allowance on fixed assets attributable to the leasing business and non-leasing business was correct.

Both the parties agreed that the basis of allocation should be by reference to the leasing activities and non-leasing activities, which is

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$$\frac{\text{Income from leasing activities}}{\text{Income from leasing activities + Income from non leasing activities}} \times \text{Common expense}$$

The only difference was that the company's allocation was 'accounting income' based whilst the tax authorities applied the taxable gross income rule as stipulated in ITLR 1986.

For accounting purposes, the income of leasing and non-leasing activities recognised in the audited profit and loss account is the interest element only. It is only for tax purposes, that income from leasing comprises lease rental receivables.

The company contended that that their method was in line with the acceptable accounting practice of recognising as income only the interest element arising from leasing and non-leasing activities. The company further contended that the method applied by the tax authorities would lead to a big proportion of the expenses being attributed to leasing activities and that;

(a) is not provided by law;
(b) is unfair, biased and inequitable;
(c) defies commercial realities; and
(d) will eventually cause the demise of the leasing industry.

The tax authorities contended that the method used by them has a legal basis and that the company's contention that it was unfair, biased and inequitable and will lead to the demise of the leasing industry was irrelevant.

The Special Commissioners chaired by Pn. Noor Azian bte Shaari decided contentions (b), (c) and (d) advanced by the company were irrelevant citing dicta by Lord Sands in CIR v The Granite City Steamship Company Ltd; "Equity and Income Tax are strangers" and as to contention (a), the company had merely said that the method used by the tax authorities was not provided for in law but failed to show that that method was wrong, as required by para 13 of schedule 5:

"The onus of proving that an assessment against which an appeal is made is excessive or erroneous shall be on the appellant."

The Special Commissioners were of the opinion that the method applied by the tax authorities was not excessive and erroneous and was in line with the provisions of the tax laws. In arriving at that decision they referred to the deductibility provisions of section 33 of the Act:

"...Thus, in order to arrive at adjusted income one has to deduct from the gross income all outgoings and expenses wholly and exclusively incurred in the production of gross income. Therefore the gross income is one that matters.

Since section 33(1) talks about gross income ***it is only natural*** *that the common expenses must be apportioned between the leasing and the non leasing activities, using gross income and here we emphasis "gross income". To do otherwise would be against the provisions of section 33(1) of the Act.*

However, in respect of leasing activities, "gross income" is clearly defined in the ITLR which is.....the total sum of rentals of a lease term receivable in respect of a lease....

.....

From this it is clear that "gross income" of leasing activities comprises of total rentals which is made up of principal plus interest. While on the other hand, gross income of non leasing activities, it is only the interest as provided for under section 24(5)(a)...."

In this case, since both parties are disputing which gross income is to be used as the basis of apportionment, surely the tax authorities method have a legal basis as compared to the accounting income adopted by the company. In Ryan v Asia Mill Ltd, it is clearly established that

"what may be prudent accountancy is not necessarily the correct method of ascertaining the proper assessment for income tax."

The Special Commissioners further concluded that

"...the respondent's (tax authorities) method does have a legal basis i.e. since section 33(1) talks about gross income then the apportionment of common expenses between leasing and non leasing activities must be related to gross income for both and not gross income for non leasing and "interest income" only for leasing activities when the law gives a clear definition

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of gross income for leasing activities...."

2. **D Leasing Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (PKR 663)**
This case is identical to SL Sdn Bhd. The crux of the issue was whether the method of apportionment for the common expenses and capital allowances should be based on gross income (taxable income) or interest income (accounting method).

The Special Commissioners arrived at a split decision. Two Commissioners (including the Chairman) agreed that the IRB method was in line with the SL decision. The third Commissioner, Toong Chooi Poh accepted neither the IRB method nor the taxpayer's method, instead he proposed a 'modified accounting method", which is "non capital income from each of the two portfolios" as a basis for the allocation of common expenses and capital allowances.

Commissioner Tan considered that since capital expenditure is not allowable as a deductible expense under section 33 of the Act, in the same vein, it should not be taken into account for the purpose of apportioning the non-capital common expenses. In the writer's opinion, although this method is not provided by the Act, its merit as being just and equitable cannot be denied.

THE TAX IMPLICATION OF SL AND D LEASING CASE

The tax authorities will maintain the gross income method as the basis of allocation of common expenses and capital allowances for a leasing company. Nevertheless a question lingering in the minds of taxpayers is whether the gross income basis is the only basis or there may be other acceptable basis such as portfolio basis.

With due respect to the learned Special Commissioners, the writer is of the opinion that section 33 of the Act only governs the deductibility of expenses against the gross income. It was never intended to provide a method of apportionment of expenses and capital allowances. It had been observed by Rowlatt J in Cape Brandy Syndicate v IRC, "...There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied....". Section 33 is only the machinery section for "deductibility of expenses against income" and not a section on "apportionment of expenses."

The case of SL centered upon what gross income (taxable or accounting) should constitute the basis of allocation of common expenses and capital allowances. Between these two, the writer is of the opinion that the apportionment by taxable gross income is correct in law. The taxable income method should prevail over accounting income method.

However, as between gross income method or portfolio method, it is the writer's view that the latter should prevail. The leasing industry being a specialised sector, one should accept its modus operandi. Since the industry is fund based, the portfolio method will create a proper matching of income and expenses. The Act is silent on the method of apportionment, therefore one should be allowed to used a method which is appropriate to industry practice.

The ITLR 1986 only stipulates that the income of the leasing source be lease rental receivables (which is distinct from the accounting treatment that recognises as income of a leasing source the interest due); it did not at the same time provide for the corresponding special treatment for apportioning common expenses.

The omission of such basis would form a lacuna in law. The tax authorities should therefore allow the taxpayer to choose a method that is just and reasonable and in line with industry practice or modus operandi. In the words of Lord Wynford in R v Winstanley (House of Lord),

"...In all revenue cases, let the officers of the government take care that the legislature is made to speak plain and intelligible language. If the legislature is not made to speak plain and intelligible language, let not the individuals suffer, but let the public.....if there is any doubt about the words, the benefit of the doubt should be given to the subject."

After all, the total expenses claimed are the same. The allocation of expenses using different basis may create some timing difference between tax payable at various years, nonetheless, the total tax payable for all years would be the same assuming tax rate is constant at 30%. In the writer's opinion, if tax authorities do not agree with the accounting interest income method it may want to consider the portfolio debtors method as an alternative.

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Leasing Industries - A call for reform

A CALL FOR REFORM

The leasing company would have difficulty finalising their tax computations for the prior years unless the basis of allocation is based on " taxable gross income" as suggested by the tax authorities. In the past, the tax authorities firmly held this view that the basis of allocation is restricted to only "taxable gross income". In future, it would even be more difficult to pursue the Revenue especially with the result of the two Special Commissioners cases which favoured the Revenue.

The leasing industry should consider the following alternatives to mitigate the past and future tax liabilities.

1. Issue of practice note

   The company with the assistance from ELAM may request the tax authorities to issue a practice note on the basis of allocation. Though the Inland Revenue authority, following corportisation, is now more responsive in attending to contentions issues, with the decision on SL, it is unlikely to issue a practice note that would over rule that decision.

2. Representation to the Finance Minister

   The disputes between the tax authorities and the taxpayers on the basis of allocation has been never ending since the legislation of ITLR 1986. Both the parties are unlikely to reach an agreement as they have their own interest to serve. It is time to put forward a memorandum to the Finance Minister for consideration. The decision of the Minister would be global based in the macro interest of the country. To be successful, the fact put forward must have strong evidential value.

3. Submission of test case

   The judicial position on the basis of allocation of common expenses and capital allowances is not fully explored even with the decision of SL. It may be ideal to submit a test case on the validity of portfolio balance as the basis. The problem is then everyone would like to learn from the test case but no one would like to be the guinea pig.

4. Reform - rationalisation of leasing

   The lessor that carries on the leasing and non-leasing business may be tired pursuing the allocation of expenses issue with the tax authorities. Time and experience shows that judicial exercise is always a costly affair and the lessor may want to rationalise its leasing business by establishing another new company to undertake its non-leasing operation.

   With rationalisation, the lessor would transfer one of its business operation (leasing or non leasing) into the new company. Thus the issue of allocation of expenses would not arise.

CONCLUSION

The decision of SL is an important one. If the leasing company do not take an active role, the tax cost based on the gross income allocation will be heavy. The leasing industry should carefully consider the alternatives suggested above to remain competitive.

QUOTE

Leadership:

Your position never gives you the right to command. It only imposes on you the duty of living your life that others can receive your orders without being humiliated.

Dag Hammerskjold

A CASE COMMENTARY: Tax Provision - Get it Right

by Syed Mubarak bin Syed Ahmad LLB(LOND), LLM(LOND), FCCA, FCIS, CPA, PA(M), BARRISTER(LINCOLN'S INN)

The decision of the High Court in **Ketua Pengarah Hasil Dalam Negeri v. Golden Dragon Printing & Dyeing Factory Sdn Bhd ([1997] 1 CLJ supp 586)** suggests that making provision for taxation in the accounts could be detrimental: it might increase one's tax liability by converting one source of income into another. This remarkable ruling, if correct, breaks new ground in tax law. For it is a well-established principle of tax law that the label attached to an item in a set of accounts is not conclusive as to its true nature.

The material facts of **Golden Dragon**, supra, are these. The taxpayer company was carrying on its batik printing and dyeing business until 1st September 1972 and had used its factory building in that business. Thereafter the company ceased the business and became dormant. Then, that is, in December 1978, the company let out the factory building for rent. Prior to this the company sustained losses which were duly reflected in the accounts. The Revenue assessed the rent received from 1978 as rental income under section 4(d) of the Income Tax Act 1967 and not as business income under section 4(a). Consequently, the company was disallowed from setting off the losses carried forward from the previous year.

The company appealed against the assessments to the Special Commissioners of Income Tax. The company argued that the rents received constituted income from a business within the meaning of section 4(a) of the Income Tax Act 1967 on the grounds that the company was formed to make profits for its shareholders and therefore any gainful use to which it has put any of its assets prima facie amounts to carrying on of a business. The company first used the factory building in its batik printing business and later put the building to profitable use by letting it out for rent. The Revenue contended that the word "business" means a continuous and active commercial operation; but in this case there was a lull period - a period of no business activity for six years - and what the company did after that was just letting out the building in the capacity of an ordinary property owner. In such circumstances, the Revenue argued, the letting out of the property could not be construed to be a normal business operation and consequently the income received therefrom was not income from a business or from a source consisting of a business. The said income, therefore, had correctly been assessed to income tax under section 4(d) of the Act.

The Special Commissioners however allowed the company's appeal on the ground that the Revenue has failed to rebut the prima facie inference that during the relevant periods of assessment the company was carrying on a business of letting out its premises for rent. In allowing the appeal the Commissioners relied on the decision of Privy Council in **ALB Sdn Bhd v. *Director-General of Inland Revenue* (1950-1985) MSTC 33** which was adopted by the Federal Court in **RE Sdn Bhd v. Director-General of Inland Revenue (1050-1985) MSTC 64**. In that case the Privy Council held that where a company incorporated for the purpose of making profits for its shareholders any gainful use to which it puts any of its assets prima facie amounts to the carrying on of a business; and where premises are let in the course of carrying on the business of putting them to profitable use the rents receivable could be classified as income from a source consisting of a business under section 4(a) of the Income Tax Act 1967, notwithstanding that they may also be classified under section 4(d) as "rents".

The facts of the instant case are almost identical to that of the **ALB case**, supra. In that case the appellant company was engaged in tobacco business in which its factory building was used. The tobacco business of the appellant proved to be unprofitable and had accumulated losses and was eventually discontinued. Following the cessation of the business the appellant company let out its factory building intermittently to a few companies for rent. The issue that arose in that case was whether the income received from the letting out was income from a business under section 4(a) of the Income Tax Act 1967 or rental income under section 4(d). The Revenue maintained that the classes of income under section 4 were mutually exclusive and that the income should fall under section 4(d) while the appellant company contended that it should fall under section 4(a) of the Act. The Special Commissioners, on appeal, held in favour of the appellant company. Their decision was confirmed by the High Court. On further appeal by the Revenue, the Federal Court reversed the decision of the High Court. However, the Privy Council restored the decision of the Special Commissioners. In delivering the advice of the Board, Lord Diplock held that the various paragraphs of section 4 of the Income Tax Act 1967 are not mutually exclusive and that 'rents', despite the fact that they are referred to in paragraph (d) of section 4, 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; and in the case of a company formed for the purpose of making profits for its share-

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holders any gainful use to which it puts any of its assets prima facie amounts to the carrying on of a business.

In the instant case the Revenue sought to distinguish the **ALB case**, supra, before the Special Commissioners by advancing two main arguments. The first was that the taxpayer company's inactivity for six years before it let out its factory building for rent unlike in the **ALB case**, negatived any prima facie case of the business of letting out its property. The other was that the company did not object to the classification of the rents accrued in the years 1978 to 1980 as income falling under section 4(d). Both these arguments were rejected by the Commissioners. They held that there is no provision in the Income Tax Act 1967 which restricts the word "business" only to mean continuous business activity throughout the period the company is in existence. The period of "no activity" was not relevant in the **ALB case** where Lord Diplock said at p. 3: "The carrying on of 'business', no doubt usually calls for some activity on the part of whoever carries it on, though, depending on the nature of the business, the activity may be intermittent with long intervals of quiescence in between." As to the company's failure to object to the classification of the rents as income under section 4(d) the Commissioners opined that that does not preclude the company from raising an objection, as done by it, for subsequent years of assessment. For the tax determined for one year is final for that year and it is not final for any other purpose (**per Greer LJ in IRC v. Sneath [1932] 2 KB 362**). Further in **M.Y. v. Comptroller General of Inland Revenne [(1950-1985) MSTC 127]** Abdul Hamid J. (as he then was) said that the fact that the appellant did not object to a previous assessment on a point which he is now contesting is irrelevant. Although the decision in that case was reversed by the Federal Court (see [1972] 2 MLJ 110) this point was not disturbed.

When the instant case came for the opinion of the High Court on appeal made by the Revenue, the Court reversed the decision of the Special Commissioners. In allowing the Revenue's appeal the High Court held that the respondent's prima facie case of business of letting out its property to tenants had been amply rebutted by the fact that the respondent's annual accounts for the years 1978 to 1982 included provisions for taxation for the rents received even though there was a substantial amount of accumulated losses brought forward since the cessation of business on 1st September 1972. The Court said that if the rents were to be treated as income from business, as contended by the respondent, there would not be a need to provide for taxation in the accounts in respect of the rents received since the amount of accumulated losses brought forward was greater than the amount of rents received for the respective years.

The reasoning of the High Court is unusual and its ruling is likely to prove controversial. To rely solely on the provision for taxation made in the accounts of the company as evidence to rebut the company's prima facie case of business of letting out of its property is questionable in principle; nor is it supported by either authority or compelling argument. Making provision for taxation in the accounts of a company is merely an accounting convention. Under that convention a company is required to provide for taxation in respect of its income as part of disclosing the company's assets and liabilities at a given date. Although that convention is reinforced by the disclosure requirements in the Companies Act 1965, it could not be used as evidence to determine whether an income is taxable or to convert one source of income into another for tax purposes. As part of the accounting concept of prudence a company may provide for taxation for a particular income where there is some doubt as to its taxability or as to its category. But the making of provision for taxation by itself does not amount to admission that the income is taxable; nor does it change the true nature of the income.

Whether a given income is taxable or not and whether it is taxable under one source of income or another is a question of law and not a question of accounting convention. It is a question with regard to which the courts have for centuries formulated and applied rules, first of all in common law settlements, later in the law of trusts and later still in the laws regulating companies and other business associations. The policy reasons for rejecting evidence of accounting treatment of income by the courts have sometimes been made explicit. So, for example, Lord Guest stated in **B.S.C. Footwear Ltd. Ridgway (1971) 2 All ER 534** that the taxpayer's method of stock valuation, using a "replacement value" was not in accordance with the principles of income tax law, in part because "such a method would make it possible for a taxpayer to control his profits for tax purposes by a calculation at his own hand, which is undesirable." In other words, it lacked objectivity. And in **Minister of National Revenue v. Anaconda American Brass Ltd ([1956] A.C. 85)**, where the Privy Council did not question expert accountancy evidence that the L.I.F.O. method was the most appropriate method of stock valuation in

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that case, it was nevertheless rejected for tax purposes, since the purpose of this method was to equalize the results of operations over the years whereas "the Income Tax Act is not in the year 1947 concerned with the years 1948 or 1949."

The High Court in **Golden Dragon** effectively stood this well understood principle on its head, holding that the company's provision for taxation alone is sufficient evidence to rebut its prima facie case of business. Elevating evidence of accountancy practice above established precedents is, with respect, open to criticism. In this regard it is worth recalling the judgment of Lord Diplock in the **ALB case**, supra, at p.3 which is in the following terse terms:

"In the case of a private individual it may well be that the mere receipts of rents from property that he owns raises no presumption that he is carrying on a business. In contrast, in their Lordships' view, in the case of a company incorporated for the purpose of making profits for its shareholders any gainful use to which it puts any of its assets prima facie amounts to carrying on of a business. **Where the gainful use to which a company's property is put is letting it out for rent, their Lordships do not find it easy to envisage circumstances that are likely to arise in practice which would displace the prima facie inference in doing so it was carrying on a business.**" (emphasis added)

The most disappointing feature of **Golden Dragon** is the total failure of the High Court to advert to the high probative standard required of any evidence to displace the prima facie case of the company's business of letting out of its property. Citing evidence of accounting provision for taxation to rebut the case is rather weak, if not irrelevant. The restrictive approach taken by the Court in evaluating evidence required to displace the prima facie inference of business contrasts radically and surprisingly with the forthright approach taken by the Privy Council in the **ALB case**; where it was stated that such inference could not be easily displaced in practice.

It is not however suggested that accountancy evidence is totally irrelevant in all cases concerning income tax. In cases other than those involving the question of liability some weight might be given to accountancy evidence; and the courts have recognized this (see per Viscount Dilhorne in **B.S.C. Footwear Ltd v. Ridgway [1971] 2 All ER 534, 549**, "As I see it, no question of law is involved in this case. All we are asked to do is to express our opinion on a system of accountancy on which the views of accountants differ"). But the important thing here is that there is no point of law directly involved, the sole task of the court being to choose between two competing figures produced by two competing accountancy techniques. Even in these cases however accountancy evidence is not conclusive. The last word is always with the court. Thus in **Ostime v. Duple Motor Bodies Ltd [1961] 2 All ER 167, 170**, Viscount Simonds said: "The practice of accountants, though it were general or even universal could not by itself determine the amount of profits or gains of a trade for tax purposes."

The weakness of the decision in **Golden Dragon** is that so much importance has been unduly attributed to the provision for taxation in the accounts of the respondent though it was merely an estimate based on the accounting concept of prudence - to rebut the respondent's strong prima facie case of business. In so doing the Court has allowed the Revenue to impeach any taxpayer's claim on the basis of estimates provided for taxation in the accounts.

It is not satisfactory that so important a principle of tax law should be diluted in this way. It is hoped that the appellate court will have an opportunity in the near future to consider the issue and restore the correct position in this area of law.

QUOTE

It is not the mountain we conquer but ourselves.

Edmund Hillary

MINUTES OF MEETING BETWEEN THE INLAND REVENUE BOARD (TECHNICAL DIVISION) AND ACCOUNTING BODIES

Bahagian Teknikal, Ibu Pejabat, Lembaga Hasil Dalam Negeri, Kuala Lumpur.

UCAPAN PENGERUSI

Tuan Pengerusi memulakan mesyuarat dengan ucapan selamat pagi kepada semua yang hadir. Beliau memaklumkan bahawa mesyuarat pagi ini tidak dapat dipengerusikan oleh En. Nujumudin b. Mydin (Tim. Ketua Pengarah) kerana beliau kurang sihat. Seterusnya Tuan Pengerusi mengalu-alukan kehadiran semua wakil daripada MACPA, MIA, MIT, MAICSA dan MATA. Beliau berharap dengan mengadakan dialog ini dan sambutan menggalakkan yang telah diterima akan terjalinlah 'smart partnership' antara LHDN dengan Persatuan Perakaunan. Langkah ini juga akan mengeratkan lagi hubungan LHDN dengan Persatuan Perakaunan.

PERKARA-PERKARA BERBANGKIT

i) Mesyuarat diteruskan dengan membincangkan masalah-masalah teknikal yang telah dikemukakan secara bertulis daripada pihak MACPA dan MIA/MIT. Tiada pertanyaan bertulis diterima daripada MAICSA dan MATA. Masalah-masalah yang telah dikemukakan dibincangkan dan jawapan yang diberi oleh Bahagian Teknikal telah dipersetujui oleh semua wakil persatuan yang hadir. Masalah-masalah bertulis serta jawapan disenaraikan di Lampiran I. Mesyuarat juga bersetuju bahawa sekiranya terdapat masalah bagi kes-kes tertentu, ianya boleh dirujuk kepada Bahagian Teknikal untuk keputusan dasar.

ii) Beberapa soalan sampingan telah dikemukakan tambahan kepada masalah-masalah teknikal yang dibangkitkan. Soalan-soalan tambahan adalah seperti berikut:

a) **'Brokerage fees'**
Berhubung dengan pendapatan sewa rumah di bawah Seksyen 11 Akta Cukai Pendapatan 1967, Tuan Pengerusi memaklumkan bahawa sekiranya perbelanjaan broker adalah untuk pertama kali ('initial expenditure') ianya di anggap perbelanjaan modal dan tidak dibenarkan potongan.

Makluman

b) **'Tour Operating Income'**
Wakil MACPA menyatakan bahawa, pelancong luar negeri telah dibawa masuk oleh 'foreign tour agent' dan bukannya agen tempatan. LHDN, Cawangan Kuching tidak membenarkan pengecualian cukai pendapatan sekiranya agen tempatan tidak menyediakan pengangkutan bagi pelancong luar negeri masuk melawat Malaysia. Walaubagaimana pun, wakil MACPA tidak dapat mempastikan sama ada surat kelulusan telah diterima daripada Kementerian Kesenian dan Pelancongan. Oleh kerana masalah ini dibangkitkan oleh salah seorang ahli MACPA di Kuching maka wakil MACPA akan sampaikan maklumat ini.

Tuan Pengerusi memaklumkan bahawa untuk tujuan pengecualian cukai pendapatan, syarikat-syarikat pelancongan mestilah berdaftar dengan Kementerian Kesenian dan Pelancongan serta mengemukakan surat kelulusan Kementerian tersebut sebelum pengecualian cukai pendapatan dapat di benarkan.

Tindakan: MACPA

c) **Pemindahan Aset (Perenggan 17(1) Akta CKHT 1976)**
Wakil MACPA meminta supaya perkataan 'transfer' dalam peruntukan Perenggan 17(1) Akta CKHT 1976 diberi definisi dengan tepat. Sekiranya surat perjanjian jual beli aset ditandatangani di antara pelupus dan pemeroleh, adakah ini bermaksud 'a disposal has taken place' ataupun 'a transfer has taken place'. Lebih mudah bagi sesuatu 'disposal' berlaku jika di bandingkan dengan 'transfer' kerana 'transfer' melibatkan beberapa peraturan dan tindakan birokrasi dalam menukar taraf hak milik aset.

Berhubung dengan perkara ini, wakil Pejabat Ketua Pengarah HDN menyatakan bahawa amalan Jabatan selama ini hendaklah diikuti di mana perjanjian jual-beli hendaklah dikemukakan untuk kelulusan Ketua Pengarah HDN sebelum berlakunya pemindahan aset.

Seterusnya, Tuan Pengerusi memutuskan supaya Pejabat Ketua Pengarah HDN menjelaskan maksud 'transfer' sama ada 'disposal' sahaja ataupun 'transfer' dalam erti kata penyempurnaan pertukaran hak milik.

Tindakan:
Pejabat Ketua *Pengarah HDN*

Mesyuarat juga berbincang tentang kelulusan yang perlu diperolehi daripada FIC dan SC dan syarat-syarat yang perlu dipatuhi sebelum pemindahan aset dapat disempurnakan dan permohonan Perenggan 17(1) Akta CKHT 1976

dapat diluluskan. Pihak MACPA diminta menulis kepada Y. B. Menteri Kewangan sekiranya undang-undang yang sedia menimbulkan kesulitan dan perlu dipinda.

Tindakan: MACPA

HAL-HAL LAIN

i) En. Veerindeerjit Singh menimbulkan masalah tidak keseragaman dalam amalan percukaian di kalangan penaksir-penaksir di cawangan. Sebagai contohnya, terdapat penaksir yang tidak mengetahui amalan yang telah dibenarkan sebagai konsesi di mana pendapatan bukan perniagaan boleh ditaksir menurut tahun kewangan syarikat dan tidak semesti menurut tahun kalender. Ini berlainan daripada punca pendapatan perniagaan yang mesti ditaksir menurut tahun kewangannya. Masalah sebegini tidak sepatutnya timbul kerana hanya membuang masa.

Beliau seterusnya menyarankan agar LHDN selain daripada mengeluarkan arahan/garis panduan baru perlu juga mengeluarkan semula dan mengemaskini arahan teknikal dan garis panduan percukaian yang telah lama. Sehubungan dengan ini Tuan Pengerusi memaklumkan tindakan seperti yang dicadangkan sedang dilakukan dan kursus 'refresher' juga akan diberikan kepada semua penaksir untuk menjamin tahap kualiti yang tinggi dikalangan penaksir-penaksir.

Makluman

ii) En. Quah Poh Keat membangkitkan persoalan mengenai pindaan kepada Seksyen 109 Akta Cukai Pendapatan 1967 berhubung dengan cukai pegangan yang telah dipinda dalam Belanjawan 1997. Beliau meminta penjelasan lanjut maksud 'crediting' dalam Seksyen 109B sama ada 'credited to general provision account' masih tertakluk kepada cukai pegangan.

Oleh kerana soalan beliau berkenaan dengan satu kes tertentu, maka Tuan Pengerusi meminta beliau menulis surat secara berasingan kepada Bahagian Teknikal.

Tindakan: MIT

iii) Pn. Nik Esah bt Nik Mahmood mengingatkan supaya akaun berasingan disimpan bagi pendapatan 'inbound tour operators' yang mendapat pengecualian cukai pendapatan. Beliau juga memaklumkan bahawa Cawangan Syarikat sedang mengamalkan sistem pemeriksaan minimum, oleh itu agen cukai diminta supaya tidak membuat tuntutan elaun modal dan **ADA** bagi peralatan yang masih belum digezet dan diluluskan oleh Perbendaharaan.

Makluman

iv) Pn. Wan Noorsiah bt Wan Abdullah memaklumkan bahawa berhubung dengan isu pemindahan aset di bawah Perenggan 17(1) Akta CKHT 1976, Ketua Pengarah HDN hanya akan meluluskan permohonan syarikat setelah mendapat kelulusan pihak FIC dan SC.

Namun begitu, mesyuarat memutuskan bahawa Pejabat Ketua Pengarah HDN menyelesaikan masalah ini melalui prosedur pentadbiran dengan pihak FIC dan SC untuk memudahkan pemindahan aset.

Sekiranya isu ini tidak dapat di atasi maka kemungkinan undang-undang perlu dipinda. Untuk ini, pihak Persatuan Perakaunan hendaklah menulis kepada pihak Perbendaharaan berhubung dengan pindaan undang-undang.

Tindakan:
(i) Pejabat Ketua Pengarah HDN
(ii) MACPA/MIA

v) En. Joseph Teoh menasihatkan agen cukai supaya membuat peruntukan kewangan yang mencukupi bagi pembayaran cukai pendapatan sekiranya ansuran bulanan bayaran cukai pendapatan adalah rendah. Ini akan mengelakkan pembayar cukai dikenakan penalti atas bayaran lewat dan lain-lain masalah berhubung pembayaran cukai pendapatan.

PENUTUP

i) Tuan Pengerusi mengucapkan terima kasih kepada semua wakil Persatuan Perakaunan yang hadir mesyuarat pagi ini. Beliau berharap semua pihak berpuas hati dengan dialog ini. Dialog sebegini akan diteruskan sekurang-kurangnya sekali setahun terutamanya awal tahun. Isu-isu yang tidak dapat diputuskan dalam mesyuarat ini akan diberi perhatian dan tindakan sewajarnya diambil.

ii) Seterusnya tiap-tiap wakil Persatuan Perakaunan mengucapkan terima kasih kepada LHDN terutamanya Bahagian Teknikal kerana mengadakan dialog ini. Mereka juga berharap dialog sebegini akan terus diadakan dari masa ke masa.

PERBINCANGAN LHDN DENGAN PERSATUAN-PERSATUAN PERAKAUNAN

MASALAH-MASALAH YANG DI KEMUKAKAN

Bahagian Teknikal, Ibu Pejabat, Lembaga Hasil Dalam Negeri, Kuala Lumpur.

VENTURE CAPITAL COMPANY ("VCC")

Section 60D of the Act grants the following incentives to a company that qualifies as a VCC:-

- Tax exempt gains from the disposal of shares in a venture company
- Payment of tax-exempt dividends
- Deduction of up to 25% of permitted expenses

To qualify as a VCC, approval from the Minister of Finance is required. While waiting for approval from the Minister, taxpayers have been asked by the Ministry's officers to submit tax computations based on the assumptions that VCC status have been approved. However, IRB treated such tax computations, with VCC status pending, as investment holding companies. This means that taxpayers will miss out on the tax incentives given to VCC.

Proposal:
Please clarify whether or not such cases should be treated as VCC.

Answers:
IRB requires the approval letter from Minister of Finance confirming VCC status before tax incentives can be given to such companies.

COMPUTATION OF RENTAL INCOME UNDER SECTION 4(A)

Rental income assessable under Section 4(a) should be based on the combined assessable income of all properties (i.e. on a block basis). However, IRB assessors had allowed interest expense only against the rental income derived from each property. If such practice continues, it may lead to all trading income from same source being taxed on a separate basis.

Proposal:
Please confirm that rental income assessed under Section 4(a) is to be calculated on a block basis.

Answers:
Rental Income assessed under Section 4(a) is to be calculated on the combined assessable income of all properties (i.e. on a block basis).

DATE OF COMMENCEMENT FOR PROPERTY DEVELOPMENT COMPANY

For property development company, the date of commencement of business is the earlier of:

(i) commencement date of active development of the land: or
(ii) booking date

The date of commencement of business is a critical date as it determines the amount of precommencement expenditure as well as overlaping periods under certain circumstances.

Proposal:
Please clarify the meaning of "active development of land". Whether it refers to clearing of land or commencement of piling works.

Answers:
For a property development company, any physical work on the land will be considered as "active development of land". Thus clearing of land or commencement of piling works will be considered as active development of land.

ASSESSMENT OF RENTAL INCOME

According to the IRB's Guidelines on Assessment of Rental Income, every floor of the shophouse which has a separate strata title is considered as one unit.

However, in Sabah, there are 3 or 4 storey shop offices that are without strata titles. The ground floor is rented out as a shop while the first and second floors are rented out as offices. The top floor is used as residence.

Under the above scenario, is each floor of the shop office considered as one unit? If the IRB adopts the strict interpretation that one unit refers only to a floor which has a separate strata title, it will be unfair to taxpayers who owned shop offices and have difficulties converting them into strata titles.

Proposal:
Please clarify the definition of "Unit" in the above scenario.

Answers:
Each strata title is considered as one Unit of property.

BROKERAGE PAID TO SECURE REPLACEMENT TENANTS

IRB had been known to disallow the above expenses. Commission or brokerage is normally paid to real estate agents to secure replacement ten-

ants. As such, it should be treated as expense wholly and exclusively incurred in the production of rental income.

Proposal:
Please confirm that brokerage paid to secure replacement tenants is tax deductible.

Answers:
Brokerage fees to secure replacement tenants is an allowable deduction since the source of rental income is a continuing source and not to be treated as a new source each time there is a change of tenancy.

TAX EXEMPTION OF INBOUND TOUR OPERATING INCOME

"Group inclusive tour" means a tour package undertaken by tourists from outside Malaysia, inclusive of transportation by air, land or sea and accommodation".

IRB, Sarawak Branch is now insisting that in order to qualify for the tax exemption, the inbound tourists transportation from the country of origin to Malaysia must be arranged by the taxpayer concerned. Precisely it means the taxpayer must have its own offices overseas to do the necessary travel arrangements.

IRB is now revising the past few year assessments on the ground that taxpayers were wrongly enjoying the tax exemption. It is not practicable and, in most countries impossible for our local inbound tour operators to set up offices there. It involves additional expenses which will have to be added into the tour package price resulting in our country not attractive to visit in terms of price.

It is normal practice for our local tour operator to tie up with travel agent overseas to provide whatever services required by tourists in the country. Local inbound tour operators promote Malaysia by attending Tourism Trade Missions overseas almost yearly. Information brochures on tour packages to Malaysia are distributed at the Tourism Trade Exhibition and also given to travel agent overseas.

Proposal:
Please remove the requirement that local tour operators must arrange for the inbound tourists transportation from the country of origin.

Answers:
Inbound tour operating companies must be registered with the Ministry of Culture & Tourism (MOCAT). For purposes of tax exemption of inbound tour operating income, the company must forward the approval letter from MOCAT before tax exemption can be allowed. The matter of arranging transportation from the country of origin to Malaysia by the company does not arise.

APPLICATION FOR DOUBLE DEDUCTION FOR RESEARCH & DEVELOPMENT EXPENSES

The new guidelines issued by the IRB in December 1996 require applications for double deduction for research and development (R&D) expenses, together with the report of the external auditor as required in the application form, to be submitted to the IRB within 3 months after the company's financial year end, as compared to the 6 month allowance when the submission was made to MIDA. There may be practical difficulty in complying with the tight deadline as audit of the company's accounts may not have been completed by then and therefore, information on the R&D expenses would not be available.

The Association would like to suggest that applications for double deduction for R&D expenses be submitted together with the company's annual returns, similar to the procedure for applications for reinvestment allowance. In this case, if the application is not submitted by the filing date, the claim for double deduction would be disallowed until the application is made (within the permissible statutory period).

Answer:
IRB has agreed that companies applying for double deduction for R & D expenses may submit the application within 6 months after the company's financial year end.

CLARIFICATION OF TAX LEGISLATION

Members of the Association, in their capacity as tax agents, have encountered instances where their requests for clarification on the interpretation of certain provisions of the tax legislation were not entertained by the IRB officers. However, when their clients (taxpayers) submitted the requests directly to the IRB, clarification was provided. This has caused embarrassment to the tax agents as it would appear that the tax agents were incapable of resolving their client's tax problems.

The Association would like to stress the importance of the close co-operation between the IRB and the tax agents in ensuring compliance with the tax legislation. In order for the tax agents to perform their duties effectively, they would need the assistance of the IRB in providing clarification on ambiguities in the tax law and regulations so that they can advise their

clients on the official view of the IRB on a particular point of law.

The Association would also like to suggest that where the clarification provided by the IRB is on an issue of general interest, guidelines should be issued for the benefit of the taxpayers at large. This will not only assist taxpayers in complying with the law but also reduce the administrative burden on the part of the revenue officers in answering individual enquiries on the same issue.

Answer:
This may relate only to pre-transaction rulings and hypothetical cases. Guidelines and rulings have been issued by LHDN on particular topics.

TRANSFER OF ASSETS UNDER REAL PROPERTY GAINS TAX ACT

Paragraph 17(1) of Schedule 2 to the Real Property Gains Tax (RPGT) Act, 1976 provides that the prior approval of the Director General of Inland Revenue is required for any transfer of assets between companies, either for the purpose of bringing about greater efficiency in operation or pursuant to a scheme of reorganisation, reconstruction or amalgamation, where the transfer is to be treated as a disposal on which the transferor receives no gains and suffers no loss.

The IRB has now taken the stand that in order to qualify under the above provisions, the prior approval of the Director General must be obtained before the signing of the sale and purchase agreement. This is at variant from the previous procedure where the application is submitted to the Director General for consideration within one month after the sale and purchase agreement has been signed but before actual transfer of the asset is effected, and the Director General will consider the application only after approval by the other regulatory authorities has been obtained.

The Association is of the view that the new requirement may result in practicable inconvenience. Before an agreement is signed, there is no contractual commitment to the transaction and if one party decides to withdraw from the deal, it would be a waste of the IRB's resources in considering and processing the application. In addition, the terms of the proposed sale and purchase agreement may have to be changed due to certain conditions imposed by the regulatory authorities such as the FIC and SC, which may cause a re-submission to the Director General for approval.

The Association would like to suggest that the previous procedure be maintained.

Answer:
The previous procedure as claimed is not practised by IRB. IRB requires that the application for Paragraph 17(1) RPGT 1976 must be submitted to the DGIR before the sale and purchase agreement (SPA) is signed. However this does not mean the application will not be considered by the DGIR after the relevant authorities such as FIC and SC have made changes and imposed certain conditions to those agreed in the original SPA. Thus the 'prior approval' of the DGIR as required under Paragraph 17(1) actually means that the application must be submitted to IRB before signing of the SPA.

ACCELERATED DEPRECIATION ALLOWANCE (ADA)

In the 1997 Budget, ADA was extended to cover equipment required in providing natural gas for vehicles at petrol stations as well as to monogas buses. In the 1996 Budget, ADA was extended to information technology equipment and environmental protection equipment.

It is noted that to date, these changes to the Act have not yet been gazetted. The Association would like to seek confirmation that claims for ADA in the tax computation would be allowed despite the fact that the relevant gazette order has not yet been issued.

Answer:
Claims for accelerated depreciation allowance will not be considered until the relevant gazette order has been issued.

Q U O T E

No bird soars too high, if he soars with his own wings.

Willliam Blake

This circular was issued by the Inland Revenue Board on 29 July 1997

GARIS PANDUAN PENGURANGAN SEBANYAK 50% DARI CUKAI YANG DIKENAKAN ATAS PENDAPATAN AKTIVITI PENJELAJAHAN DAN PENGEKSPLOITAN PETROLEUM DALAM KAWASAN BERSAMA MALAYSIA - THAILAND

AM

Garis panduan ini bertujuan memberi penerangan mengenai prosidur pengurangan sebanyak 50% dari cukai yang dikenakan atas pendapatan aktiviti hiliran yang berkaitan secara langsung dengan penjelajahan dan pengeksploitan petroleum dalam Kawasan Pembangunan Bersama MalaysiaThailand.

PENGENALAN

Kerajaan Malaysia dan Kerajaan Thailand telah bersetuju menandatangani satu Memorandum Persefahaman dalam tahun 1979 ekoran daripada tuntutan bertindih atas sempadan bersama di Teluk Siam. Dalam Memorandum tersebut kedua-dua negara bersetuju menubuhkan Pihak Berkuasa Bersama bernama Pihak Berkuasa Bersama Malaysia-Thailand (PBBMT) yang akan mentadbir dan mengendalikan aktiviti penjelajahan dan pengeksploitan sumber asli dalam kawasan yang bertindih yang dipanggil Kawasan Pembangunan Bersama (KPB) memandangkan kedua-dua negara mempunyai kedaulatan ke atas kawasan ini.

Di bawah perjanjian di antara kedua-dua Kerajaaan, Malaysia dan Thailand telah bersetuju akan terus mengenakan dan memungut cukai berhubung dengan pendapatan yang diperolehi dari KPB di bawah undang-undang negara masing-masing tertakluk kepada perkara-perkara seperti berikut:

i) Kontraktor Perkongsian Pengeluaran (Production Sharing Contractors) yang beroperasi dan mengendalikan aktiviti huluan akan dikenakan cukai pendapatan petroleum mengikut kadar berikut

8 tahun pertama selepas pengeluaran petroleum	-	0%
7 tahun yang berikut	-	10% daripada pendapatan yang dikenakan cukai
tahun-tahun seterusnya	-	20% daripada pendapatan yang dikenakan cukai.

Cukai yang dipungut oleh kedua-dua negara akan dikurangkan sebanyak 50% di negara masing-masing dan apa-apa perbezaan cukai yang dipungut akibat dari prinsip percukaian yang berlainan akan dibahagikan sama rata yang mana akan diselaraskan oleh PBBMT.

ii) Rakyat (national) Malaysia atau Thailand yang menjalankan penggajian dengan PBBMT atau di KPB dikenakan cukai di mana penerima saraan itu bermastautin.

iii) Lain-lain kategori pembayar cukai seperti kontraktor perkhidmatan bebas dan pekerja asing dikenakan cukai mengikut perundangan yang wujud di kedua-dua negara dengan syarat di mana sesuatu pendapatan tertakluk kepada cukai di kedua-dua negara, cukai yang dikenakan di negara masing-masing akan dikurangkan sebanyak 50%.

iv) PBBMT dikecualikan daripada cukai di kedua-dua negara

Bagi menguatkuasakan Perjanjian tersebut, pindaan kepada Akta Petroleum (Cukai Pendapatan) 1967 dan juga Perintah Pelepasan Cukai Dua Kali Malaysia-Thailand 1983 telah dilaksanakan di mana perlu.

PROTOKOL BAGI MEMINDA PERJANJIAN PELEPASAN CUKAI DUA KALI MALAYSIA-THAILAND 1995

Pendapatan yang diperolehi dari KPB tertakluk kepada cukai di Malaysia dan Thailand. Untuk mengelakkan pendapatan yang diperolehi dari KPB dikenakan cukai dua kali, kedua-dua buah negara telah bersetuju mengurangkan sebanyak 50% dari cukai yang dikenakan di negara masing-masing.

Persetujuan ini telah dikuatkuasakan melalui Protokol di bawah Perkara 7A, 12A, 14A dan 20A Perjanjian Pelepasan Cukai Dua Kali Malaysia-Thailand 1995. Protokol ini berkuatkuasa bagi pendapatan untuk tahun kalendar atau tempoh perakaunan yang bermula pada atau selepas 1 Januari 1992.

a) **Perkara 7A - Pendapatan atau Keuntungan Perniagaan dari KPB**
Pendapatan atau keuntungan perniagaan dari KPB merangkumi dua kategori pembayar cukai seperti berikut:
   i) Kontraktor perkongsian Pengeluaran (Production Sharing Contrators) yang mengendalikan aktiviti huluan. Pendapatan mereka tertakluk kepada Akta Petroleum (Cukai Pendapatan) 1967.
   ii) Kontraktor selain daripada di atas seperti kontraktor perkhidmatan yang mengendalikan aktiviti hiliran yang berkaitan **secara langsung dengan penjelajahan dan pengeksploitan petroleum dalam KPB**. Pendapatan mereka tertakluk kepada Akta Cukai Pendapatan 1967.

b) **Perkara 12A - Royalti**
Royalti bermaksud royalti sebagaimana ditakrifkan dalam Perkara 12 Perjanjian Pelepasan Cukai Dua Kali yang berbangkit daripada aktiviti di KPB dan yang dituntut sebagai perbelanjaan dalam perniagaan yang dijalankan oleh Kontraktor Perkongsian Pengeluaran atau kontraktor bebas lain seperti dalam perenggan 3.1.

c) **Perkara 14A - Perkhidmatan Personal**
Perkhidmatan personal merangkumi beberapa kategori individu seperti berikut:
   i) Rakyat (national) Malaysia atau Thailand yang menjalankan penggajian dengan PBBMT atau dalam KPB.
   ii) Individu selain daripada rakyat Malaysia atau Thailand yang menjalankan penggajian dengan PBBMT atau dalam KPB.
   iii) Individu yang menjalankan perkhidmatan profesional dalam KPB.

Bagi maksud Perkara ini, pekerjaan yang dilaksanakan di KPB adalah pekerjaan dengan kontraktor yang disebut dalam perenggan 3.1 yang **hanya** berkaitan dengan penjelajahan dan pengeksploitan petroleum.

d) **Perkara 20A - Fee Teknikal**
Fee Teknikal bermakna fee teknikal sebagaimana yang ditakrifkan di bawah Perkara ini yang hanya berkaitan dengan aktiviti-aktiviti yang dijalankan oleh kontraktor yang disebut dalam perenggan 3.1.

AKTIVITI YANG BERKAITAN SECARA LANGSUNG DENGAN PENJELAJAHAN DAN PENGEKSPLOITAN PETROLEUM DALAM KPB

Seperti yang terkandung dalam Protokol, pendapatan dari KPB yang dikenakan cukai di Malaysia dan Thailand yang dibenarkan pengurangan 50% adalah pendapatan dari **aktiviti yang berkaitan secara langsung dengan penjelajahan dan pengeksploitan petroleum dalam KPB**. Memandangkan kesukaran untuk mengenalpasti dan menentukan aktiviti yang dimaksudkan dalam KPB, satu senarai "exclusion" telah disediakan oleh kedua-dua Kerajaan melalui Pertukaran Surat (Exchange of Letters).

Aktiviti-aktiviti yang temasuk dalam senarai itu bukan merupakan aktiviti-aktiviti yang berkaitan secara langsung dengan penjelajahan dan pengeksploitan. Bagaimanapun, bukan semua aktiviti yang tidak termasuk dalam senarai itu merupakan aktiviti yang berkaitan secara langsung dengan penjelajahan dan pengeksploitan.

a) **Senarai "Exclusion"**
   i) Perkhidmatan profesional yang diberikan oleh akauntan, juruaudit, peguam dan doktor;
   ii) Kerja-kerja senggaraan dan pembaikan yang berbentuk am dan tidak memerlukan kemahiran khusus;
   iii) Sajian/katering dan perkhidmatan sokongan;
   iv) Pengangkutan darat;
   v) Insurans;
   vi) Perkhidmatan kewangan;
   vii) Pembinaan, pemasangan dan pembangunan kemudahan-kemudahan di pesisir selain dari kemudahan yang digunakan sehingga peringkat jual (point of sale) petroleum;
   viii) Aktiviti-aktiviti lain yang dipersetujui dari semasa ke semasa oleh kedua-dua Menteri Kewangan Malaysia dan Thailand.

   (Senarai ini akan disemak dari semasa ke semasa).

LAYANAN CUKAI

Pengurangan pengenaan cukai sebanyak 50% diberi di peringkat jumiah **cukai yang dikenakan**. Peruntukan penghapusan cukai dua kali di bawah Perkara 23 Perjanjian Pelepasan Cukai Dua Kali Malaysia/Thailand tidak terpakai.

a) **Pendapatan Perniagaan**
Semua aktiviti di KPB yang dimaksudkan di perenggan 3.1.(ii) tertakluk kepada Akta Cukai Pendapatan seperti juga aktiviti perniagaan lain. Fakta sesuatu kes itu

perlu diteliti untuk memastikan sama ada perniagaan dalam KPB merupakan satu perniagaan yang berasingan. Perkara ini perlu dipastikan kerana cukai atas keuntungan dari aktiviti yang berkaitan secara langsung dengan penjelajahan dan pengeksploitan di KPB akan dikurangkan sebanyak 50%.

i) Pengiraan Cukai

Sekiranya aktiviti yang dijalankan di KPB merupakan satu punca perniagaan berasingan masalah pengiraan cukai dan pengurangan cukai tidak timbul. Bagaimanapun sekiranya sesuatu perniagaan itu menjalankan aktiviti di KPB dan di luar KPB beberapa perkara perlu ambil perhatian:

- Pendapatan dari KPB dan bukan KPB adalah punca dari satu perniagaan.

- Pengurangan sebanyak 50% adalah cukai atas aktiviti di KPB sahaja. Bagi tujuan pengiraan rebat, cukai atas pendapatan KPB dan cukai atas pendapatan bukan KPB perlu dikira secara berasingan.

Berikut adalah beberapa contoh pengiraan pengurangan cukai di mana sesuatu perniagaan itu mempunyai pendapatan dari KPB dan pendapatan bukan dari KPB.

Contoh 1

Di mana terdapat keuntungan dari KPB dan keuntungan bukan dari KPB.

	KPB			Bukan dari KPB	
Pendapatan kasar		400,000			100,000
Tolak	180,000			20,000	
Perbelanjaan langsung					
Perbelanjaan umum 400,000 x 100,000 500 000	80,000	260,000	100,000 x 100,000 500,000	20,000	40,000
Pendapatan larasan		140,000			60,000
Tolak					
Elaun modal 400,000 x 50,000 500,000		40,000	100,000 x 50,000 500,000		10,000
		100,000			50,000
Jumlah Pendapatan yang dikenakan cukai			= 150,000		
Cukai Pendapatan atas 150,000 @ 30%			= 45,000		

Pengurangan cukai 50% atas cukai dari pendapatan di KPB:

100,000 X 45,000 X 50% / 150,000 = 15,000

Contoh 2

Di mana terdapat kerugian dari KPB dan keuntungan bukan dari KPB dengan jumlah keseluruhan menunjukkan keuntungan .

	KPB			Bukan dari KPB	
Pendapatan kasar		100,00		400,000	= 500,000
Tolak					
Perbelanjaan langsung	90,000			110,000	
Perbelanjaan Umum 100,000 x 100,000 500,000	20,000	110,000	400,00 x 100,000 500,000	80,000	190,000
Pendapatan larasan		(10,000)			210,000
Agregat pendapatan larasan			200,000		
Tolak					
Elaun modal			50,000		
Pendapatan berkanun/dikenakan cukai			150,000		

Dalam kes ini, tiada pengurangan cukai 50% diberikan kerana tiada cukai yang kena dibayar atas pendapatan dari KPB (aktiviti di KPB mengalami kerugian).

Contoh 3

Di mana terdapat keuntungan dari KPB dan kerugian bukan dari KPB dengan jumlah keseluruhan menunjukkan keuntungan.

	KPB		Bukan dari KPB	
Pendapatan kasar		400,000		100,000
Tolak				
Perbelanjaan langsung	110,000		90,000	
Perbelanjaan umum 400,000 x 100,000 500,000	80,000	190,000	100,000 x 100,000 500,000	20,000 110,000
Pendapatan larasan		210,000		(10,000)
Agregat pendapatan larasan		200,000		
Tolak				
Elaun modal		50,000		
Pendapatan berkanun/dikenakan cukai		150,000		
Cukai pendapatan atas 150,000 @ 30% =		45,000		
Pengurangan cukai 50% atas cukai dari pendapatan di KPB: 45,000 x 50% =		22,500		

Memandangkan aktiviti bukan KPB mengalami kerugian, pendapatan berkanun/yang dikenakan cukai berjumlah 150,000-adalah semata-mata timbul daripada aktiviti KPB.

Contoh 4

Di mana terdapat keuntungan dari KPB dan kerugian bukan dari KPB dengan jumlah keseluruhan menunjukkan keuntungan. Di samping itu syarikat mempunyaipendapatan dari sumber-sumber lain.

Perniagaan - Pendapatan berkanun KPB 100,000		
(Bukan dari KPB - rugi 50,000)	50,000	(100,000 - 50,000)
Sewa	5,000	
Faedah	5,000	
Pengiraan pengurangan cukai adalah seperti berikut:		
Perniagaan	50,000	
Sewa	5,000	
Faedah	5,000	
Pendapatan yang boleh dikenakan	60,000	
Cukai pendapatan atas 60,000 @ 30% =	18,000	
Pengurangan cukai 50%: 50,000 X 18,000 X 50% = 60,000	7,500	

Contoh 5

Di mana terdapat keuntungan dari KPB dan keuntungan bukan dari KPB dan kerugian dari Perniagaan Kedua. Syarikat juga mempunyai pendapatan dari sumber-sumber lain.

Perniagaan I -
Pendapatan berkanun 150,000 (termasuk pendapatan dari KPB 100,000)

Perniagaan II -
rugi (20,000)

Sewa		5,000
Faedah		5,000
Pengiraan pengurangan cukai 50% adalah seperti berikut:		
Perniagaan I -		150,000
Perniagaan II - rugi	(20,000)	TIADA
Sewa		5,000
Faedah		5,000
		160,000
Tolak		
Kerugian Sek. 44(2)		(20,000)
Pendapatan yang boleh dikenakan cukai		140,000
Cukai pendapatan atas 140,000 @ 30% =		42,000
Pengurangan cukai 50%: 100,000 X 42,000 X 50% = 160,000		13,125

Contoh 6

Di mana terdapat keuntungan dari KPB dan kerugian bukan dari KPB dan kerugian dari Perniagaan Kedua. Syarikat juga mempunyai pendapatan dari sumber-sumber lain.

Perniagaan I		
[KPB 100,000 dan Bukan dari KPB	(50,000)]	50,000
Perniagaan II - rugi	(20,000)	TIADA
Sewa		5,000
Faedah		5,000
Pengiraan pengurangan cukai 50% adalah seperti berikut:		
Perniagaan I		50,000
Perniagaan II - rugi	(20,000)	TIADA
Sewa		5,000
Faedah		5,000
		60,000

Tolak

Kerugian Sek. 44(2)	(20,000)
Pendapatan yang boleh dikenakan cukai	40,000

Cukai atas 40,000 @ 30% = 12,000

Pengurangan cukai 50%:

50,000 x 12,000 x 50% = 5,000
60,000

ii) **Perbelanjaan**

Di mana sesuatu perniagaan itu menjalankan aktiviti di KPB dan di luar KPB perbelanjaan-perbelanjaan umum boleh diperuntukkan mengikut asas perolehan atau keuntungan kasar. Di mana perbelanjaan langsung yang dilakukan di KPB dapat dikenalpasti perbelanjaan itu akan dibenarkan sebagai potongan sepenuhnya. Pembayar cukai disyorkan menyimpan akaun untung-rugi yang berasingan bagi memudahkan pengiraan cukai.

iii) **Akaun Seksyen 108**

Peruntukan Seksyen 108 adalah terpakai. Memandangkan pendapatan dari KPB dan bukan KPB ditaksir sebagai satu sumber, maka tidak wajar mengadakan akaun berasingan bagi tujuan Seksyen 108. Oleh itu pengasingan antara baki kredit dari aktiviti di KPB dan bukan aktiviti KPB tidak timbul.

b) **Pendapatan penggajian rakyat (national) Malaysia atau Thailand**

Saraan yang diperolehi rakyat (national) Malaysia atau Thailand dikenakan cukai, di mana penerima saraan itu bermastautin. Taraf mastautin seseorang itu akan ditentukan mengikut undang-undang negara Pejanji (Malaysia/Thailand). Sekiranya seseorang itu pemastautin di kedua-dua negara, taraf mastautinnya akan ditentukan berdasarkan kepada "tie-breaker rule" (Artikel 4, Perjanjian Pengelakan Pencukaian Dua Kali Malaysia/Thailand.)

c) **Pendapatan penggajian dan profesional bagi bukan rakyat (national) Malaysia atau Thailand**

Saraan atau apa-apa pendapatan yang diperolehi oleh individu bukan rakyat Malaysia atau Thailand dari sesuatu pekerjaan atau perkhidmatan profesional dikenakan cukai di kedua-dua negara oleh kerana pendapatan mereka tertakluk kepada cukai di kedua-dua negara. **Pengurangan cukai 50% akan diberi di peringkat jumlah cukai yang dikenakan (tax chargeable).**

Bagi menentukan taraf mastautin, butir-butir perjalanan seperti yang terdapat dalam pasport antarabangsa, alamat dan nombor kad pengenalan seseorang itu boleh dijadikan asas.

d) **Cukai Pegangan:**
- **royalti**
- **fee teknikal**
- **bayaran kontrak berhubung dengan perkhidmatan kontrak**

Tidak ada borang khas dikeluarkan untuk tujuan memberi pengurangan cukai 50%. Pengurangan cukai 50% boleh dilakukan pada masa bayaran dibuat oleh pembayar dengan syarat bukti-bukti yang lengkap mengenai pengendalian aktiviti di KPB dapat dikemukakan ke LHDN.

Pembayar cukai boleh membuat permohonan kepada Cawangan Pungutan untuk mendapat kelulusan pengurangan cukai 50%.

BORANG NYATA PENDAPATAN

Borang berasingan untuk tujuan melaporkan pendapatan dari KPB tidak akan dikeluarkan. Prosedur biasa dalam mengembalikan Borang Nyata Pendapatan dipakai.

POTONGAN CUKAI BERJADUAL (PCB)

Kaedah PCB adalah dipakai walaupun pekerja-pekerja berkenaan hanya bekerja secara jangka pendek di Malaysia. Majikan tidak dibenarkan membuat pengurangan cukai 50% atas PCB. Pembayar cukai boleh memohon supaya PCB diberhentikan sebaik sahaja notis taksiran dikeluarkan.

PENGENDALIAN FAIL

Di mana boleh, fail-fail taksiran bagi pembayar cukai bukan pemastautin hendaklah dikendalikan oleh Cawangan Tidak Bermastautin, Kuala Lumpur. Bagaimanapun, untuk kemudahan mereka yang tinggal di luar Kuala Lumpur fail mereka bolehlah dikendalikan oleh Cawangan yang terdekat. Fail pembayar cukai pemastautin akan terus dikendalikan oleh Cawangan yang berkenaan.

PROSEDUR TUNTUTAN PENGURANGAN CUKAI 50%

Untuk mendapatkan pengurangan cukai 50% pembayar cukai bertanggungjawab membuktikan pendapatan yang diterima itu terbit dari aktiviti di KPB. Dokumen seperti perjanjian kontrak mengenai kontraktor-kontraktor yang mengendalikan aktiviti di KPB termasuk juga individu yang menjalankan penggajian/perkhidmatan dengan kontraktor-kontraktor tersebut boleh dijadikan bukti pengesahan. Sebarang keraguan atau masalah dalam mengendalikan kes-kes ini boleh dirujuk kepada:

i) Bahagian Teknikal berhubung pelaksanaan pengurangan cukai 50% atas pendapatan dari KPB.

ii) Bahagian Antarabangsa dan IOFC dari segi intepretasi Protokol kepada Perjanjian Pelepasan Pencukaian Dua Kali Malaysia/Thailand .

Pihak PBBMT dari semasa ke semasa akan mengemukakan senarai kontraktor dan individu yang terlibat dalam aktiviti di KPB dan maklumat ini akan diedarkan kepada cawangan-cawangan untuk membantu dalam mengenalpasti aktiviti di KPB bagi tujuan memberi pengurangan cukai sebanyak 50%.

PERKARA 26 - PERTUKARAN MAKLUMAT

Perkara 26, Perjanjian Pengelakan Pencukaian Dua Kali Malaysia/Thailand adalah terpakai bagi mendapatkan maklumat mengenai aktiviti di KPB.

LEMBAGA HASIL DALAM NEGERI Unit 23, Bahagian Antarabangsa dan IOFC Tingkat 12, Blok 11 Kompleks Bangunan Kerajaan Jalan Duta 50600 KUALA LUMPUR.

A N N O U N C E M E N T

TRANSFER OF DATO' ISKANDAR DZAKURNAIN

Y Bhg Dato' Iskandar Dzakurnain Badarudin, the Secretary to the Tax Analysis Division of the Ministry of Finance was recently transferred to the Penang Development Corporation as the General Manager. The Institute takes this opportunity to thank him for his valuable contribution and support to the Institute as well as the tax profession.

The Institute would like to take this opportunity to welcome his successor, Dr Syed Mohamed bin Syed Abdul Kadir and hope to maintain the good relationship built with the Ministry.

Happy Festival of Light (Deepavali) to all Hindu readers

From

The Council of The Malaysian Institute of Taxation

CODE OF ETHICS FOR TAX AGENTS

PRAKATA

Kod Etika Ejen Cukai ini diwujudkan dengan tujuan untuk membolehkan ejen cukai memahami keperluan Lembaga Hasil Dalam Negeri (LHDN) Malaysia dan dengan ini dapat menjalankan tugas dan tanggungjawabnya dengan lebih berkesan.

Ejen Cukai memainkan peranan sebagai penasihat kepada pembayar cukai yang menggunakan perkhidmatan mereka. Sekiranya ejen cukai menjalankan tugas mereka sepertimana yang diharapkan, secara tidak langsung akan memudahkan LHDN Malaysia dalam mengendalikan kerja-kerja percukaian dan seterusnya urusan percukaian akan menjadi lebih efisien. Sesungguhnya, kerjasama yang lebih erat dapat dijalinkan antara dua pihak bagi mewujudkan "smart partnership" demi kebaikan bersama dan kepentingan negara.

Adalah diharapkan ejen cukai akan mematuhi Kod Etika ini dalam menjalankan tugas mereka supaya ia boleh meyakinkan orangramai untuk menggunakan perkhidmatan mereka.

"BERKHIDMAT UNTUK NEGARA"

"BERSAMA MENYUMBANG UNTUK PEMBANGUNAN NEGARA"

DATO' MOHD. ALI BIN HASSAN, Pengerusi Eksekutif, Lembaga Hasil Dalam Negeri, Malaysia. 19 JUN 1997

INTRODUCTION

With the everchanging business environment, the increasing complexity of business transactions and the need to ensure proper record keeping to capture these transactions for tax purposes, the role of a tax agent has evolved from being an intermediary merely assisting in completing a tax return to a person who is expected to understand the impact and requirements of tax legislations upon the affairs of his clients. Furthermore, with the commencement of field audit operations by the Inland Revenue Board (IRB) Malaysia there is an urgent need for professional services from tax agents to be rendered to taxpayers. Recognising the importance of the role played by tax agents in representing taxpayers, it is proper that a code of ethics be formulated to govern the conduct and behaviour of tax agents so as to instil professionalism as well as to give public assurance of integrity.

PRINCIPLES

The principles on which this code relies are those that concern integrity, accountability, transparency and social responsibility. A tax agent has a social responsibility to the nation as a whole. He is expected not only to give the best advice to his clients but also to impress upon the clients their obligation to pay their dues as required by the law.

OBJECTIVES

i) This code of ethics is formulated with the view to inculcate good tax practice by way of ensuring a high standard of tax compliance and representation so as to achieve the following objectives:-

(a) To nurture the spirit of professionalism among tax agents so as ensure that all work performed is objective, impartial, efficient and comprehensive.

(a) To instil the spirit of accountability in line with tax principles/practices that are in accord with existing tax legislations/regulations.

(c) To uphold the spirit of social responsibility consistent with public morality.

ii) Compliance with this code of ethics will be used as one of the criteria for approving and renewing the licence of the tax agent. In this code, **"tax agent"** means a tax agent as defined in Section 153 of ITA 1967, that is:

- a professional accountant authorised by or under any written law to be an auditor of companies;
- any other professional accountant approved by the Minister of Finance; or
- any other person approved by the Minister on the recommendation of the Director General of Inland Revenue.

CODE OF CONDUCT

In discharging his duties, a tax agent shall always adhere to the following:

1. **Integrity**

   i) An agent shall be well mannered, honest, sincere and truthful in his work and always give full co-operation when dealing with the IRB Malaysia. In handling the case of his client, he shall furnish only information which, to the best of his knowledge and belief, is correct.

   ii) He shall refrain from using information acquired in the course of his work for his own advantage or that of his family. Such information is classified material and shall be dealt with as confidential. It shall not be disclosed to any other party without specific authority.

   "Classified material" means returns/documents/information that is acquired by a classified person as defined in Section 138(5), Income Tax Act 1967. A ***"classified person"*** means any person or his employee who has access to classified material when representing a client in taxation matters.

   iii) He shall accurately inform/advise his client on the progress of his case.

   iv) He shall not misuse any monies entrusted by his client for purposes of payment of tax. Proof of payment of tax shall be given to his client for purposes of record.

   v) He shall not enter into any arrangement with an unqualified person to endorse the work of that unqualified person.

2. **Competency**

   i) He shall always strive for professional competency and exhibit a high degree of skill in discharging his duties. A tax agent must therefore be conversant with the tax laws/practices and constantly ensure that his technical knowledge is up-to-date. In addition he is also expected to keep abreast with the requirements of the IRB Malaysia, which may be announced from time to time.

   ii) Staff members of a tax agent must also be well trained in relevant aspects of tax laws and regulations so as to ensure that work performed by them also meet the required standard.

   iii) He shall to the best of his ability, ensure that all returns and tax computations submitted are properly completed with the required supporting statements and schedules, and such submissions are in compliance with the guidelines issued by the IRB Malaysia.

   iv) He shall only undertake cases that are within his experience and capability. This is to avoid any sub-standard work being performed and undue delay in the finalisation of the cases.

   v) When making appeals against any assessment, proper care shall be taken to ensure that such appeals are based on valid grounds.

   vi) He is expected to give prompt and complete replies to inquiries from the IRB Malaysia.

3. **Professional Advice**

   i) In giving professional advice to his clients, the tax agent shall always have regard to the prevailing tax laws.

   ii) He shall impress upon his clients the various obligations and duties as taxpayers under the tax laws and educate the clients on the importance of maintaining proper records of all transactions especially in business cases.

   iii) He shall also advise his clients of the necessity to make sufficient provisions for payment of tax as well as the importance of keeping to the instalment plans for payment of tax so as to avoid late payment penalties.

GENERAL

i) Tax agents approved under Section **153(3)(c) of the Income Tax Act 1967** shall quote the approval number indicating the date of such approval on all correspondence with IRB Malaysia.

ii) He shall inform the IRB Malaysia when he ceases to be the tax agent of a client. Letters and return forms addressed to taxpayers who are no longer his clients shall be returned with an appropriate notation.

iii) A tax agent's own tax affairs shall be kept up-to-date. All returns, accounts etc. ought to be timeously lodged and tax payable be settled within the time allowed.

A STUDY ON THE PROFESSIONAL NEEDS OF MEMBERS OF MIT*

INTRODUCTION

The objective of the study is to examine, (1) the perceptions and opinions of MIT members pertaining to the usefulness, relevance and short comings of Continuing Professional Development (CPD) courses on taxation and that of Tax Nasional, the quarterly official journal of MIT; (2) the factors that may have discouraged members from attending CPD courses on taxation and (3) the type of the CPD courses on taxation that members may probably wish to attend.

The feedback from MIT members were obtained through a questionnaire survey. Only 165 useable questionnaires were received, representing about 15% of the total number of questionnaires that were mailed to all MIT members by the MIT Secretariat.

FINDINGS AND DISCUSSIONS

PROFILE OF THE RESPONDENTS

Of the total respondents, 130 (or 78.7%) are also members of the Malaysian Institute of Accountants (MIA). Of the other 35 (or 21.3%) who are not MIA members, most of them passed the Inland Revenue Department's Advanced Course. In terms of occupation, the majority are in private practice, either offering only tax services (19.4%) or a combination of tax and non tax services (48.5%), while about one quarter (23.6%) are employees in the private sector. Only a small number are employees of the Inland Revenue Board or in private practice, but do not offer tax services.

The single biggest group (35.8%) have between 6 to 8 years of working experience in the field of taxation, while 18.2% have less than 6 years and another 18.2% have 15 or more years of similar working experience. The other 7.8% have working experiences ranging from 9 to 14 years [see Table 1]. Of the total respondents, 70.3% are working in the west coast states of Peninsular Malaysia, with 47.3% alone working in the Klang Valley. The others are either working in the east coast states of Peninsular Malaysia, Sabah, Sarawak or outside Malaysia.

TABLE 1:
WORKING EXPERIENCE IN THE FIELD OF TAXATION

NUMBER OF YEARS	n (%)
2 - 5	30 (18.2%)
6 - 8	59 (35.8%)
9 - 11	23 (13.9%)
12 - 14	23 (13.9%)
15 & Above	30 (18.2%)
	165 (100%)

CPD COURSES ON TAXATION: ATTENDANCE; DURATION & DISCOURAGING FACTORS

Over the last three years, on average 23.0% never attended any Continuing Professional Development (CPD) courses on taxation while only 10.9% attended three times or more a year. However 46.1% attended once a year, while 20.0% attended twice a year [see Table 2]. The majority of 60.0% preferred one day courses, while 21.1% preferred half day courses. Of the 13.3% that preferred courses of two days or more, only 1.2% preferred courses of more than two days [see Table 3].

TABLE 2:
ATTENDING CPD PROGRAMMES ON TAXATION

Average Frequency Of Attending CPD Programmes Over The Last Three Years	n (%)
Never Attended Any	38 (23.0%)
Attended Once A Year	76 (46.1%)
Attended Twice A Year	33 (20.0%)
Attended Three Times Or More A Year	18 (10.9%)
	165 (100%)

* This study was conducted for MIT by Associate Prof. Ho Juan Keng and Ms Loo Ern Chen, both from the School of Accountancy, Institute Teknologi MARA.

TABLE 3:
DURATION OF CPD PROGRAMMES PREFERRED

Preferred Duration Of Each CPD Programme	n (%)
Half Day	35 (21.1%)
One Day	99 (60.0%)
One & Half Day	9 (5.5%)
Two Days Or More	22 (13.3%)
	165 (100%)

The respondents were requested to indicate and rank the main factors that may have discouraged them from attending CPD courses. Expensive registration fees is ranked first as the main discouraging factor (with 48.5%), followed by busy work schedules (32.7%) , timing of CPD courses (29.7%) and venue of the CPD courses (25.5%) [see Table 4].

TABLE 4:
FACTORS THAT DISCOURAGED THE ATTENDING OF CPD PROGRAMMES

Discouraging Factors	n (%)
Registration Fees Too Expensive	80 (48.5%)
Too Busy With Work	54 (32.7%)
Time Of The Programmes Not Convenient	49 (29.7%)
Venue Of The Programmes Too Far From Work Place	42 (25.5%)
Other factors	22 (13.3%
	165 (100%)

VENUE OF CPD COURSES & LOCATION OF WORK PLACE

Only 1.8% of the 47.3% who works in the Klang Valley considered the venue of CPD course to be the main factor that discourages them from attending CPD courses, while in the case of those working in the east coast states of Peninsular Malaysia, Sabah and Sarawak, more than half of them considered the venue of CPD courses the main discouraging factor. Out of the 23.0% who are working in the west cost states of Peninsular Malaysia (excluding those working in the Klang Valley), 16.4% of them do not consider the venue of CPD courses as the main discouraging factor [see Table 5].

TABLE 5:
VENUE OF CPD COURSES TOO FAR / LOCATION OF WORK PLACE

		Location Of Work Place*					
		KV	EC	WC	SS	OM	
Venue Too Far From Work Place?	YES	3 (21.8%)	7 (4.3%)	11 (6.6%)	19 (11.5%)	2 (1.2%)	42 (25.4%)
	NO	75 (45.5%)	3 (1.8%)	27 (16.4%)	18 (10.9%)	0	123 (74.6%)
		78 (47.3%)	10 (6.1%)	38 (23.0%)	37 (22.4%)	2 (1.2%)	165 (100%)

* KV = Klang Valley (Kuala Lumpur, Petaling Jaya & Shah Alam); EC = East Coast States of Peninsular Malaysia (Kelantan, Terengganu & Pahang); WC = West Coast States of Peninsular Malaysia (but excluding the Klang Valley); SS = Sabah & Sarawak; OM = Outside Malaysia.

CPD COURSES: ATTENDANCE; FEES; TIMING & BUSY WORK SCHEDULE

Of the 23.0% who never attended any CPD courses on taxation over the last three years, only 9.7% considered the timing of the courses and none considered busy work schedules, while 18.2% considered expensive fees as the main discouraging factors. On the other hand, of the 10.8% who attended CPD courses three times or more a year, none considered timing and expensive fees, while only 2.4% considered busy work schedules as the main discouraging factor. Of the 46.7% that attended CPD courses once a year, 21.8% considered expensive fees as the main discouraging factor, while for the 17.0% of the 20.0% who attended twice a year, busy work schedules is the main discouraging factor [see Tables 6, 7 & 8].

TABLE 6:
TIME NOT CONVENIENT / FREQUENCY OF ATTENDING CPD COURSES

		Frequency Of Attending CPD Courses Over The last Three Years				
		Never Attended Any	Once A Year	Twice A Year	Three Times Or More A Year	
Time Of CPD Courses Not Convenient?	YES	16 (9.7%)	22 (13.3%)	11 (6.7%)	0	49 (29.7%)
	NO	22 (13.3%)	54 (32.8%)	22 (13.3%)	18 (9.1%)	116 (70.3%)
		38 (23.0%)	76 (46.1%)	33 (20.0%)	18 (10.9%)	165 (100%)

TABLE 7:
FEES TOO EXPENSIVE / FREQUENCY OF ATTENDING CPD COURSES

		Frequency Of Attending CPD Courses Over The last Three Years				
		Never Attended Any	Once A Year	Twice A Year	Three Times Or More A Year	
Fees Of CPD Courses Too Expensive	YES	30 (18.2%)	36 (21.8%)	14 (8.5%)	0	80 (48.5%)
	NO	8 (4.8%)	40 (24.3%)	19 (11.5%)	18 (10.9%)	85 (51.5%)
		38 (23.0%)	76 (46.1%)	33 (20.0%)	18 (10.9%)	165 (100%)

TABLE 8:
TOO BUSY / FREQUENCY OF ATTENDING CPD COURSES

		Frequency Of Attending CPD Courses Over The last Three Years				
		Never Attended Any	Once A Year	Twice A Year	Three Times Or More A Year	
Too busy To Attend CPD Courses?	YES	0	22 (13.3%)	28 (17.0%)	4 (2.4%)	54 (32.7%)
	NO	38 (23.0%)	54 (32.8%)	5 (3.0%)	14 (8.5%)	111 (67.3%)
		38 (23.0%)	76 (46.1%)	33 (20.0%)	18 (10.9%)	165 (100%)

CPD COURSES: ATTENDANCE; WORKING EXPERIENCE & DURATION PREFERRED

Of the 46.0% who have 9 years or more of working experience in the field of taxation, over the last three years none of them attended CPD courses more than once a year and all of them indicated that they preferred CPD courses of not more than one day duration. Of those with 6 to 8 years of working experience, none preferred CPD courses of 2 or more days duration. Overall 81.2% preferred either half day or one day courses [see Table 9 & 10].

TABLE 9:
WORKING EXPERIENCE / FREQUENCY OF ATTENDING CPD COURSES

		Frequency Of Attending CPD Courses Over The last Three Years				
		Never Attended Any	Once A Year	Twice A Year	Three Times Or More A Year	
Years Of Working Experience In The Field Of Taxation	3-5 Yrs	0	7 (4.3%)	14 (8.4%)	9 (5.5%)	30 (18.2%)
	6-8 Yrs	2 (1.2%)	29 (17.6%)	19 (11.5%)	9 (5.5%)	59 (35.8%)
	9 yrs-more	36 (21.8%)	40 (24.2%)	0	0	76 (46.0%)
		38 (23.0%)	76 (46.1%)	33 (20.0%)	18 (11.0%)	165 (100%)

TABLE 10: WORKING EXPERIENCE / DURATION OF CPD COURSES PREFERRED

		Duration Of CPD Courses Preferred				
		Half Day	One Day	One & Half Day	Two Days Or More	
Years Of Working Experience In The Field Of Taxation	3-5 Yrs	0	6 (3.7%)	2 (1.2%)	22 (13.3%)	30 (18.2%)
	6-8 Yrs	3 (1.8%)	49 (29.7%)	7 (4.3%)	0	59 (35.8%)
	9 yrs-more	32 (19.4%)	44 (26.6%)	0	0	76 (46.0%)
		35 (21.2%)	99 (60.0%)	9 (5.5%)	22 (13.3%)	165 (100%)

TAX NASIONAL: READERSHIP & SATISFACTION

Of the total respondents, 47.3% read all the issues of Tax Nasional, 32.1% read most of the issues while 19.4% read some of the issues. The others either read a few issues or never read any. Slightly more than half (50.9%) of them are satisfied with the four annual issues of Tax Nasional. Of the 49.1% who are not satisfied, 27.3% preferred monthly issues while 21.8% preferred bi-monthly issues.

Of the 47.3% who read all the issues and 32.1% who read most of the issues, only 16.3% and 15.8% respectively are not satisfied with the four annual issues. However of the 19.4% who read some of the issues, 15.8% are not satisfied with the four annual issues [see Table11].

TABLE 11:
SATISFACTION / FREQUENCY OF READING TAX NASIONAL

		Frequency Of Reading Tax National				
		Read All Issues	Read Most Issues	Read Some Issues	Read Few Or Never Read Any Issues	
Satisfied With Four Issues A Year?	YES	51 (31.0%)	27 (16.3%)	6 (3.6%)	0	84 (50.9%)
	NO	27 (16.3%)	26 (15.8%)	26 (15.8%)	2 (1.2%)	81 (49.1%)
		78 (47.3%)	53 (32.1%)	32 (19.4%)	2 (1.2%)	165 (100%)

PERCEIVED USEFULNESS OF TAX NASIONAL

On a scale of 1 to 5 (where 1 = strongly agree; 2 = agree; 3 = neither agree nor disagree; 4 = disagree and 5 = strongly disagree), the respondents were requested to express their opinions pertaining to the usefulness of the specific sections of the Tax Nasional and of the Tax Nasional as a whole [see Table 12].

As a whole, the Tax Nasional is perceived as an effective tool for disseminating information regarding the activities of MIT. Based on the mean scores, the specific sections of the Tax Nasional that are perceived as most useful to its readers are the sections on CASE LAW and on LEGISLATION & GUIDELINES. All the other sections are also perceived to be useful to its readers.

TABLE 12:
PERCEPTIONS PERTAINING TO THE USEFULNESS OF THE TAX NASIONAL

		SA (%)	A (%)	N (%)	D (%)	SD (%)	Mean
1	As a whole, the TAX NASIONAL is an effective tool for disseminating information regarding the activities of MIT	41.2	49.7	7.9	0	1.2	1.703
2	The section on CASE LAW is useful to its readers	40.0	50.9	7.9	0	1.2	1.715
3	The section on LEGISLATION & GUIDELINES is useful to its readers	32.1	58.2	8.5	0	1.2	1.800
4	In general, the overall contents of the TAX NASIONAL are useful to its readers	29.7	61.2	7.9	0	1.2	1.818
5	The section on ARTICLES is useful to its readers	18.8	63.6	15.8	1.2	0.6	2.012
6	The section on NEWS is useful in disseminating timely information to its readers	12.7	60.0	22.4	3.6	1.2	2.206
7	The STUDENTS SECTION is useful to its readers	15.2	48.5	33.9	2.4	0	2.236

SA = Strongly Agree; A = Agree; N = Neither Agree Nor Disagree; D = Disagree; SD = Strongly Disagree

TABLE 13:
PERCEPTIONS ON ISSUES PERTAINING CPD PROGRAMMES

		SA (%)	A (%)	N (%)	D (%)	SD (%)	Mean
1	Participating in CPD programmes can contribute towards enhancing one's professional knowledge and skills	44.8	44.8	7.3	1.2	1.8	1.703
2	Practical training/ experience acquired in the course of duty would be effective in enhancing one's professional knowledge & skills	40.6	49.7	6.1	1.2	2.4	1.752
3	CPD programmes on taxation enables oneself to be acquainted with the latest development on matters relating to taxation	37.0	50.9	7.3	3.0	1.8	1.818
4	Reading the latest authoritative publications would be effective in enhancing one's professional knowledge & skills	29.1	58.8	8.5	1.2	2.4	1.891
5	Attending seminars/talks on taxation would be effective in enhancing one's professional knowledge & skills	14.5	71.5	10.3	2.4	1.2	2.042
6	Each individual MIT member should determine his/her own CPD needs	31.5	40.6	17.6	7.9	2.4	2.091
7	CPD programmes are useful forum for members to meet & exchange ideas on matters relating to their profession	20.6	56.4	15.2	6.7	1.2	2.115
8	Attending in-house training course would be effective in enhancing one's professional knowledge & skills	12.1	63.0	17.0	6.7	1.2	2.218
9	Attending CPD programmes enables oneself to get acquainted with other members of MIT	13.9	50.9	30.3	4.2	0.6	2.267
10	Attending the National Tax Conference would be effective in enhancing one's professional knowledge & skills	9.1	43.0	32.7	12.7	2.4	2.564
11	MIT members should be required to obtain a minimum number of CPD points each year	13.9	21.2	30.9	22.4	11.5	2.964
12	CPD programmes should be made mandatory for all MIT members	10.9	19.4	38.2	20.0	11.5	3.018

SA = Strongly Agree; A = Agree; N = Neither Agree Nor Disagree; D = Disagree; SD = Strongly Disagree

PERCEPTIONS ON CPD PROGRAMMES

On a scale of 1 to 5 (where 1 = strongly agree; 2 = agree; 3 = neither agree nor disagree; 4 = disagree and 5 = strongly disagree), the respondents were requested to express their opinions pertaining to certain issues on CPD programmes [see table 13].

The majority are of the opinion that participating in CPD programmes, practical training/experience, reading the latest authoritative publications, attending seminars/talks and in-house training can contribute towards enhancing one's professional knowledge and skills. However they do not agree that attending the National Tax Conference would be effective in enhancing one's professional knowledge and skills.

The majority are also of the opinion that attending CPD programmes enables one to get acquainted with other MIT members, to meet and exchange ideas with each other, and to keep up with the latest development on matters relating to taxation. However they do not agree that CPD programmes should be made mandatory for members, neither do they agree that members should be required to obtain a minimum number of CPD points each year, as they are of the opinion that each individual member should determine his/her own CPD needs.

TYPE OF CPD PROGRAMMES PREFERRED

The respondents were requested to indicate (with 1 = definitely yes; 2 = probably yes; 3 = not sure; 4 = probably not and 5 = definitely not) whether they would attend CPD programmes on specific tax topics [see table 14].

Based on the mean scores, CPD courses on tax planning ranked the highest as courses that the respondents probably or definitely would like to attend. This is followed by courses on investment incentives, tax investigations and case law. The CPD courses that the respondents would least likely to attend are those on specialised industries, such as banking, air and sea transport and insurance businesses.

TABLE 14:
TAXATION CPD PROGRAMMES THAT MEMBERS MAY WISH TO ATTEND

		DY (%)	PY (%)	NS (%)	PN (%)	DN (%)	Mean
1	Tax Planning	64.2	26.7	6.1	2.4	0.6	1.485
2	Investment Incentives	37.0	45.5	9.7	6.1	3.6	1.939
3	Practical Aspects Of Tax Investigations	36.4	41.2	9.7	10.3	2.4	2.012
4	Case Law - Interpretation, analysis & application	31.5	44.8	15.2	6.7	1.8	2.024
5	Service tax	15.2	49.1	21.8	11.5	2.4	2.370
6	Taxation Aspects Relating To Financial Instruments	20.0	38.8	26.7	13.3	1.2	2.370
7	Sales Tax	17.6	45.5	21.8	12.2	3.0	2.376
8	Core Tax Skills	22.4	37.0	20.0	13.3	7.3	2.461
9	Taxation Aspects Relating To Cross-border Transactions	13.3	37.6	29.7	17.0	2.4	2.576
10	Double Tax Treaties	10.9	32.7	34.5	19.4	2.4	2.697
11	Taxation Aspect Relating To Banking Business	7.9	20.0	34.5	29.1	8.5	3.103
12	Taxation Aspect Relating To Air & Sea Transport Business	6.7	18.2	36.4	29.7	9.1	3.164
13	Taxation Aspect Relating To Insurance Business	6.7	18.2	36.4	27.9	10.9	3.182

DY = Definitely Yes; PY= Probably Yes; NS = Not Sure;
PN = Probably Not & DN = Definitely Not

CONCLUSION

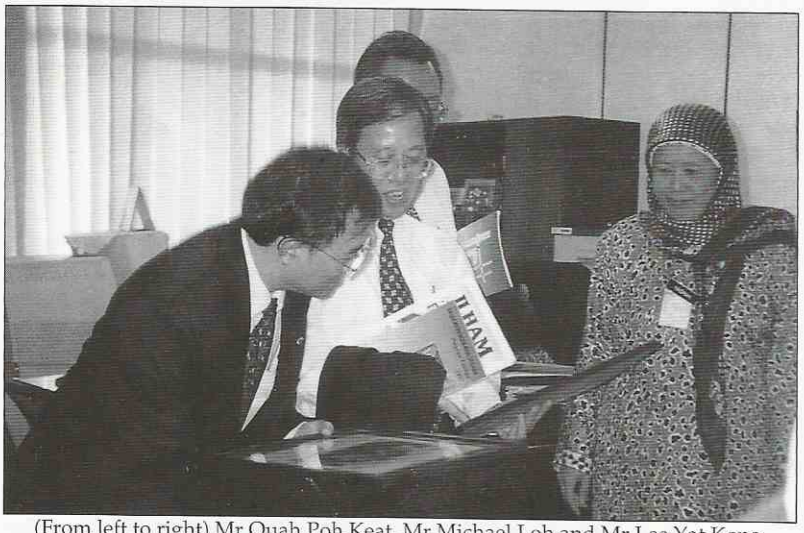
Most are of the opinion that CPD programmes are useful, but that each member should determine his/her own CPD needs. On average, the majority had attended CPD courses on taxation at least once or twice a year, and preferred either "half day" or "one day" CPD courses. On the probability of attending CPD courses on taxation that may be organised by MIT, most would like to attend tax planning courses, but not courses pertaining to specialised industries. However the majority considered expensive registration fees and heavy work schedules as the main reasons that discouraged them from attending CPD courses. For those working in the east coast states of Peninsular Malaysia, Sabah or Sarawak, the venue of CPD courses is an additional discouraging factor. The majority also read all or most of the issues of Tax Nasional. They also found each different section of the journal and the journal as a whole to be useful to its readers.

VISIT TO THE NATIONAL TAX ACADEMY

A delegation from the Institute visited the National Tax Academy (NTA) on 19 June 1997. The delegation led by Ms. Teh Siew Lin, Chairperson of the Government Affairs Committee comprised of Mr. Micheal Loh, Deputy President, En Hamzah H.M. Saman, Vice President, Mr. Veerinderjeet Singh, Mr. Lee Yat Kong and Mr. Quah Poh Keat. Upon arrival at the Academy, Pn. Hasmah Abdullah, Director of the Academy and her officers gave a very warm welcome to the delegation.

The delegation were briefed on the history of the Academy and also about the organisation structure. The Academy has its very own vision, mission and objectives. Their vision is to portrait themselves as an internationally known institution in the field of taxation, whereas their mission is to create awareness among the public to be responsible taxpayers. Their operational objective would be to improve their quality of service and management in line with the development of a dynamic taxation system.

Pn Hasmah Abdullah, Director of Academy (2nd from right) explaining about the Academy to the delegation.



(From left to right) Mr Quah Poh Keat, Mr Michael Loh and Mr Lee Yat Kong (partly hidden) looking at the Academy's photos while Pn Hasmah looks on amusingly.

Deputy President, Mr Michael Loh presenting the Institute's plaque to Pn Hasmah in appreciation for her time and a very educational visit.

During the meeting, Council members took turns to brief the Director and members of the Academy on the current activities and projects of the Institute. There was also a discussion on the possible co-operation between the Academy and the Institute on matters of common interest.

The Director later gave the Council members a comprehensive tour of the Academy. The facilities found at the Academy were very up to date and impressive. The half-day visit proved to be very educational and gave the Council members a better insight of the work at the Academy.

MEETING WITH REPRESENTATIVES FROM CATS AND AOTCA

Recently, the Malaysian Institute of Taxation (MIT) had a meeting with representatives of the Consortium of Australian Tax School (CATS) on 23 July 1997. The Consortium was established by the University of Sydney, the University of Melbourne, the Queensland University of Technology and the Taxation Institute of Australia to provide high level education in taxation to Australia and the Asia Pacific, especially at the postgraduate level.

The representatives from CATS include Mr Graeme Cooper and Mr Richard Vann, Professors of Law of Taxation from University of Melbourne and Sydney respectively, President of AOTCA, Mr David Russell and Mr John Unkles who is the Chief Executive Officer of Taxation Institute of Australia. MIT was represented by Mr Michael Loh, Chairman of Education and Training Committee and Mr Veerinderjeet Singh, Chairman of Examination Committee. This is the second meeting with the CATS representatives which was held in Malaysia.

The main purpose of the meeting with the Consortium was to finalise their interest in conducting their programmes in Malaysia with the assistance of MIT. The CATS programmes ranges from a Master of International Taxation to postgraduate diplomas and certificate in taxation, with doctoral studies available for approved applicants. The programme awards a variety of degrees, diplomas and certificates from the University of Sydney, University of Melbourne and the Queensland University of Technology. The Consortium hopes to work together with the Institute in making the programme a success.

The CATS meeting was followed by a meeting with the AOTCA representatives.

This meeting was attended by Mr David Russell who is the President of the AOTCA, Mr Peter Cowdroy, the Secretary-General of AOTCA and Mr John Unkles from Australia. Also present were Mr Norihisa Maeda, the Former Director of International Committee of JFCPTAs, Association & Honorary Advisor of AOTCA and the Manager of International Relations of JFCPTAs' Association, Ms Junko Kashawagi. The Institute was represented by Encik Ahmad Mustapha Ghazali the President of MIT and also a Vice President of AOTCA, Chairman of AOTCA Conference Organising Committee (COC), Mr Kang Beng Hoe, Honorary Secretary, Mr Chuah Soon Guan, and COC members, Mr Quah Poh Keat and Ms Teh Siew Lin.

Among the matters discussed in this meeting were the initial preparation for the AOTCA First International Convention, which will be held next year, as well as the forthcoming General Council Meeting of the AOTCA in Manila this year. MIT was selected to host the said inaugural convention next year in Kuala Lumpur.

Representatives from CATS (from left) Mr David Russel, Mr John Unkles, Mr Richard Vann and Mr Graeme Cooper

En. Ahmad Mustapha Ghazali, MIT President (second form right) having a conversation with AOTCA representatives, Mr David Russel, and Mr Peter Cowdroy. On En. Ahmad Mustapha's left is the MIT's Conference Organising Committee chairman, Mr Kang Beng Hoe

One for the album ... after dinner at Seri Angkasa Restaurant, KL Tower

MIT also hosted a dinner at Restaurant Seri Angkasa in Kuala Lumpur Tower on 23 July 1997 at 7.30 p.m. for all the delegates who attended the meetings. Mr Harpal Singh Dhillon, the Chairman of the International Relations Committee, Encik Hamzah Bin Saman, the Vice President was also present at the dinner. They were served with an international buffet set and they had a good time as they enjoyed their meal.

HONORARY FELLOWS OF THE MALAYSIAN INSTITUTE OF TAXATION

President, En Ahmad Mustapha Ghazali presenting an Honorary Fellowship certificate to Y Bhg Dato' Mohd. Ali Hassan, while Vice President, En Hamzah Saman looks on.

D-G of Customs, Y Bhg. Dato' Ahmd Padzli being conferred his honorary fellowship by President, En Ahmad Mustapha Ghazali. On the President's left is En Hamzah, Chairperson of the Government Affairs Committee, Ms Teh Siew Lin and Council member, En Atarek Kamil Ibrahim.

An Honorary Fellow is a distinction that the Institute confers to any person for his wide knowledge and vast experience in pursuits connected with the taxation profession. The Institute is proud to have some senior government officials in this category.

Recently, the Executive Chairman of the Inland Revenue Board Y Bhg Dato' Mohd Ali Hassan and Director-General of Customs Y Bhg Dato' Ahmad Padzli bin Mohyiddin had accepted the Honorary Fellowship status of the Institute. A delegation from the Institute paid a courtesy visit to their respective offices to present them with the certificate as well as to foster closer cooperation and openness with the Inland Revenue Board and the Royal Customs and Excise Department.

The list of the Honorary Fellows of the Institute at present is as follows:

Y BHG TAN SRI M S SUNDARAM
Former Director-General of Inland Revenue Department

MR EU BOON HOR
Former Director-General of Inland Revenue Department

Y M RAJA DATO' SERI ABDUL AZIZ BIN RAJA SALIM
Former Director-General of Inland Revenue Department
Former Accountant-General

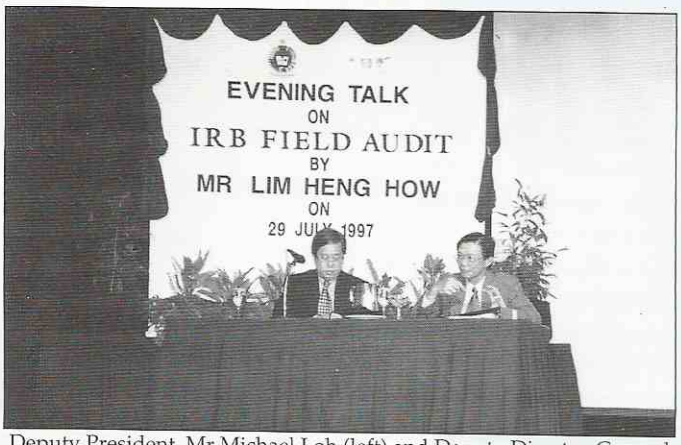
Y BHG DATO' MOHAMED ADNAN ALI
Accountant-General

Y BHG DATO' AHMAD PADZLI BIN MOHYIDDIN
Director-General of Customs

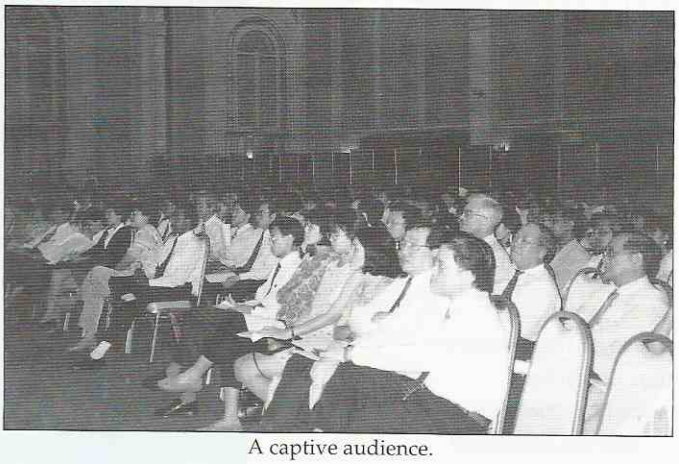
Y BHG DATO' MOHD ALI HASSAN
Executive Chairman of Inland Revenue Board

PN NAJIRAH BTE MOHD. TASSADUK KHAN
Director-General of Inland Revenue, Malaysia

SEMINARS AND EVENING TALK BY THE INSTITUTE



Deputy President, Mr Michael Loh (left) and Deputy Director-General of IRB, Mr Lim Heng How at one of the well attended seminars.



A captive audience.

A seminar on Tax Incentives and Grants Available to Small and Medium Industries was held at three major towns, namely Kuala Lumpur, Kota Kinabalu and Johor Bahru on 20 May, 21 July and 14 August 1997 respectively. This half day seminar was geared towards informing accountants and other professionals on nurturing SMIS to be world class manufacturers.

Among the topics covered were Modernisation and Automation Scheme for SMIs, Infrastructure Development, Industrial Technical Assistance Fund as well as Industrial Linkage Programme. The speakers who were from the Small and Medium Scale Industries Development Corporation (SMIDEC) include Pn Hafsah Hashim, who is the Director of Research, Policy and Promotion Bureau and En Shazwan Abdullah who is the Senior Manager of Industries and Advisory Services Bureau. The response from members as well as members of the public for this seminar was very encouraging. There were almost 50 participants who attended the seminar in Kota Kinabalu and Johor Bahru, while the seminar held in Istana Hotel, Kuala Lumpur drew close to 120 participants.

This successful seminar was jointly organised by the Institute with the Malaysian Institute of Accountants in collaboration with the Small and Medium Industries Development Corporation.

In another effort taken to enhance the professional development of its members, the Institute organised an evening talk on IRB Field Audit which was held at the Legend Hotel, Kuala Lumpur on 29 July 1997. The speaker for this talk, Mr Lim Heng How who is the Deputy Director-General of the Inland Revenue Board is not a stranger to our members who frequently liaises with the Board on tax issues. In his 28 years of service with the Inland Revenue Department, he has served in various capacities including the post of Deputy Director General (Compliance and Prevention).

The talk covered areas on what is tax audit as well as their roles and objectives and also briefly on the outline of the present structure of the IRB. It was also an honour for the Institute to have Mr Michael Loh, the Chairman of the Education and Training Committee of the Institute chairing this evening talk.

The talk which attracted almost 400 participants, included a question and answer session where participants were given an opportunity to raise their enquiries on matters pertaining to the IRB field audit.

From the active participation of the members, one can have no doubt that the talk had fulfilled the expectations of all present.

MEMBERSHIP OF MIT AS AT 29 JULY 1997

The following persons have been admitted as associate members of the Institute as at 29 July 1997.

NAME	MEMBERSHIP NO.
Christopher Kim Teong Ng	1379
Sathiah s/o Muthiah	1380
Ravandaran a/l Thangeveloo	1381
Ravindran a/l Krishnasamy	1382
Tan Sui Chee	1383
Teh Foo Hock	1384
Arunan a/l Tharumaseelan	1385
Khoo Choon Keat	1386
Leong Choy Ying	1387
Khatijah Bee binti Ismail	1388
Lam Sau Wai	1389
Yap Chee Ching	1390
Kho Cheng Kuang	1391
Yong Weng Kok @ Yoong Weng Kok	1392
Ku Hien Liong	1393
Soon Teck Kuan	1394
Wong Sian Fei	1395
Norimah binti Senawi	1396
Rohana binti Montel	1397
Lim Hong Eng	1398
Noraidah bt Samad	1399
Mary Lorette a/p Joseph Pereira	1400
Khoo Gi Soon @ Khoo Ju Soon	1401
Lye Beow Yoke	1402
Othman bin Abdullah	1403
Jayam a/l Gnanapragasam	1404
Tan Buan Jin @ Tan Teng Man	1405
Chung Chin Soo	1406
Tang Poh Thim	1407
Tan Keat Seong	1408
Ngiam Kwee Eng	1409
Harveen Kaur a/p Pirtpal Singh	1410
Neo Khoon Chye	1411
Nasiruddin Lim bin Abdullah	1412
Ting Chin Kiong	1413
Ahmad Termizi bin Kassim	1414
Wong Fook Chun	1415
Chang Jong Hua	1416
Lim Tai Yong	1417
Yap Bon Hoi	1418
Lim Kok Seng	1419
Silvernathan a/l MK Vallipuram	1420
Wee Hock Seng	1421
Thong Seng Lee	1422

The following persons have been admitted as fellow members of the Institute as at 29 July 1997.

NAME	MEMBERSHIP NO.
Ong Kong Lai	21
Lee Kim Seng @ Li Kean Lin	26
Seow Wee Chong	29
Yap Kok Leong @ Yip Kok Leong	41
Yeoh Chong Keat	43
V. Venkatachalam a/l MV Venkatachalam	44
Teoh Kah Wah	48
Leong Yee Chiew @ Leong Kow	50
Khor Kay Cham @ Koh Kay Cham	51
Mohd Ali Jaafar bin Mohamed	52
Kumarasamy s/o Nadarajah	54
Chiang Li Chian	57
Yai Yen Hon @ Chua Yen Hon	59
Goh Wan Seng	60
Tan Tee Seng	61
Lim Yam San	63
Teh Chee Meng	64
Kew Yik Sang	65
Lee Good Yew	66
Palani Veloo s/o Murugiah	68
GBB Nandy @ Gaanesh	69
Richard Kiew Jiat Fong	152

MEMBERSHIP STATUS OF MIT AS AT 29 JULY 1997

Honorary Fellows	7
Fellows	52
Associate Members*	1360
	1412

*** Associate Members**

Public Accountants of MIA	813
Registered Accountants of MIA	152
Licensed Accountants of MIA	16
Advanced Course Exam of IRD	111
Advocates & Solicitors	7
Approved Tax Agents	105
MIT Graduates	1
Others	162
Deceased/Resigned	(7)
	1360

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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.

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Malaysian Institute of Taxation

HOW TO BECOME A MEMBER OF THE MALAYSIAN INSTITUTE OF TAXATION

Benefits and Privileges of Membership

The Principal benefits to be derived from membership are:

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

Qualification Required For Membership

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

Associate Membership

1. Any person who has passed the Advanced Course examination conducted by the Department of Inland Revenue and who has not less than five (5) years practical experience in practice or employment relating to taxation matters approved by the Council.
2. Any person whether in practice or in employment who is an advocate or solicitor of the High Court of Malaya, Sabah and Sarawak and who has had not less than five (5) years practical experience in practice or employment relating to taxation matters approved by the Council.
3. Any Registered Student who has passed the examinations prescribed (unless the Council shall have granted exemptions from such examinations or parts thereof) and who has had not less than five (5) years practical experience in practice or employment relating to taxation matters approved by the Council.
4. Any person who is registered with MIA as a Registered Accountant and who has had not less than two (2) years practical experience in practice or employment relating to taxation matters approved by the Council after passing the examination specified in Part 1 of the First Schedule or the Final Examination of The Association Of Accountants specified in Part II of the First Schedule to the Accountants Act, 1967.
5. Any person who is registered with MIA as a Public Accountant.
6. Any person who is registered with MIA as a Licensed Accountant and who has had not less than five (5) years practical experience in practice relating to taxation matters approved by the Council after admission as a licensed accountant of the MIA under the Accountants Act, 1967.
7. Any person who is authorised under 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.