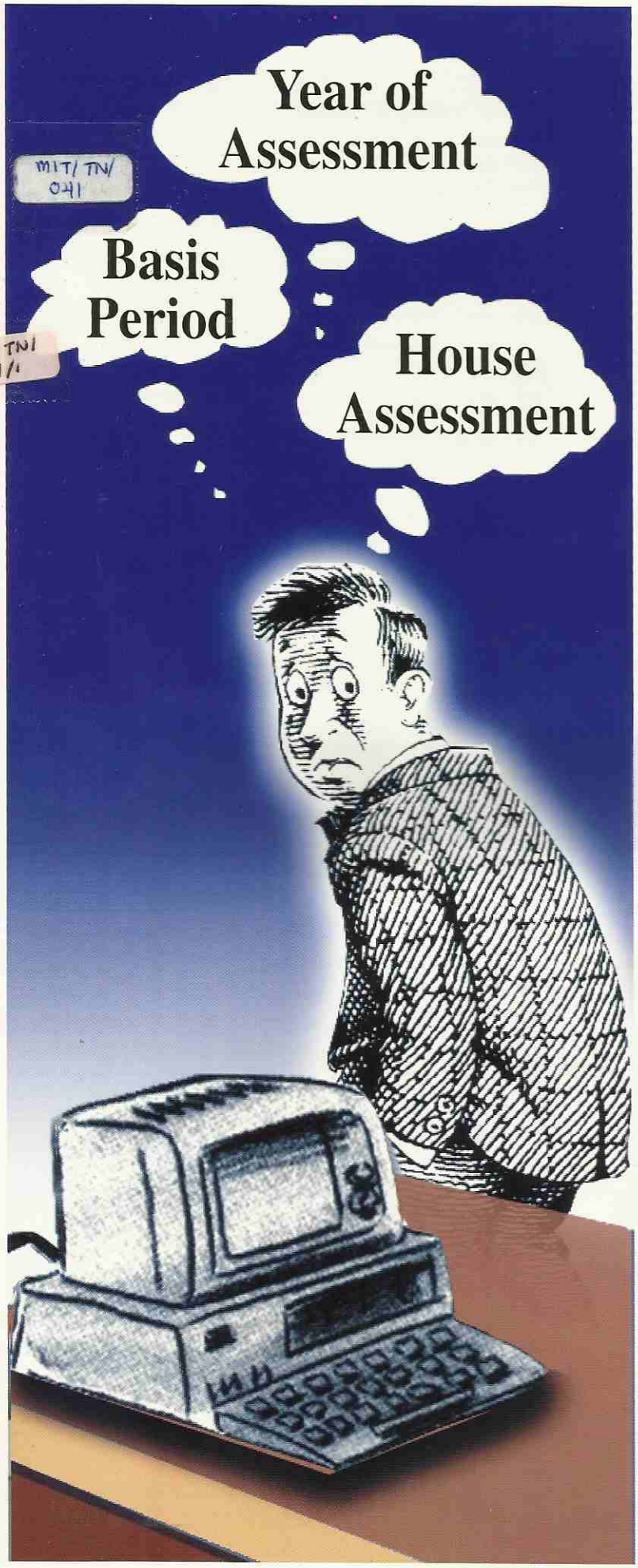

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Malaysian Institute of Taxation

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.

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Self Assessment System

SELF ASSESSMENT IN AUSTRALIA

(FROM ADOLESCENCE TO ADULTHOOD?)

By
Peter J Cowdroy
Tax Partner,
Lord & Brown (Sydney)

The introduction of self assessment was part of a reform process commenced in 1987 to bring our assessing procedure into the twentieth century. In that year, Australia's taxation system underwent the most significant change which it had experienced since 1936. In that year, in addition to the introduction of self assessment, capital gains tax and fringe benefits tax were introduced into our taxing system, significant restrictions were placed on deductibility of entertainment expenses and the requirement for taxpayers to substantiate deductions was strengthened and formalised. Australia's tax system is, again, about to go through yet another significant reform which will include the introduction of a good and services tax and which will have some significant impact on taxation of business income.

The self assessment system of taxation was introduced into the Australian Taxation System, in a limited form, with effect from the year ended 30 June 1986. Self assessment initially applied to companies and superannuation funds. From the year ended 30 June 1992 the concept was extended to other taxpayers including individuals, partnerships and non corporate trusts. Today all taxpayers are subject to some form of self assessment.

After more than ten year there are still some taxpayers who have not accepted, or fully understood the concept of self assessment, the impact which it has on their responsibility and the risks which they take in continuing to ignore their obligations. Then again, perhaps this category of taxpayer will never take taxation seriously. To others, self assessment has become a way of life. In other words the system is well integrated into our overall taxation system.

This does not mean that we are all in agreement as to how it works, far from it. There are continuing challenges between taxpayer and revenue collector on matters relating to self assessment, some of which will become apparent in the paper.

The concept of self assessment appears simple; whereas previously the Government undertook to make an assessment of a taxpayer's tax liability based on a return lodged by him, under self assessment, theoretically, it is the taxpayer, not the Government which has the responsibility for calculating a taxpayer's income tax liability. As will be seen, however, the concept of self assessment goes far further than this simple concept. It significantly alters the taxpayer's degree of responsibility by placing upon him the full responsibility for his compliance with the law. It also requires a total change in the way in which the revenue authorities carry out their functions. It requires changes to the law. Finally, it has significant impact on the responsibility and workload of accountants and tax agents.

The introduction of self assessment in Australia is part only of a broader attempt by the government to ensure that its taxation laws are complied with in the most efficient manner and that the appropriate amount of tax is collected from taxpayers. This involves not only changes to the law and changes to systems, such as self assessment, but involves changing in attitudes of taxpayers towards their obligations under the law and a change in attitude between taxpayer and tax gatherer.

In a step towards achieving these objectives other significant actions have been taken by the Government in recent years, the one being the introduction of a Taxpayers' Charter and another being the establishment of rules for the regulations of those who practice within the tax profession. The lax laws are also being rewritten into plain language.

In this paper I propose discussing the concept of self assessment and the effects which it has had in Australia and to briefly touch on the first of these two subsequent measures, the Taxpayers' Charter. David Russell will then discuss concepts of the regulation of the taxation profession.

The Existing System

Before considering the advantages and disadvantages of the self assessment system it is perhaps appropriate to consider features of the assessing system which was in place before the introduction of self assessment.

Under that system taxpayers were required to lodge income tax returns and the taxation office was required to "assess" the correctness of the return and to notify taxpayers of the amount of taxable income and the amount of tax payable for the year in question.

The act of "assessing" was not

sophisticated, consisting mostly of a review of the taxpayer's return to determine such things as arithmetical accuracy and the noting of unusual or excessive claims for deduction. No attempt was made to seek substantiation for any claims made in the return or to seek specific justification for the claim providing the claims appeared reasonable. If a claim appeared to be unusual or outside normal expectations, the Taxation Office would write to taxpayers seeking further clarification in relation to particular claims in returns. The assessment in no way, however, constituted a commercial assessment of the return.

The Commissioner does hold certain investigatory powers i.e. the right to request further information from taxpayers or others in relation to a taxpayer's return and he had a well developed investigation and audit process which was implemented where it was thought that there was either incorrect information in the returns or some attempt at fraud or tax evasion. Generally however taxpayers did not expect to be subjected to audit unless the Taxation Office had reason to believe that an investigation or audit was necessary.

Once an assessment was issued, it could only be amended by the Taxation Office in certain circumstances and within a certain time frame. If, for example the taxpayer had made a full and true disclosure of all facts necessary for the assessor to made a correct assessment of the taxpayers tax liability, the Taxation Office was denied the right to amend the assessment after the expiration of three years, even if such amendment was justified on the facts,. If the taxpayer had not made full and true disclosure, the period within which the amendment could be made was extended to six years. The right to amend was always available if fraud or evasion was involved.

If taxpayer made an error in his return he was entitled to lodge an amended return correcting the error. No amendment however affecting a reduction of the liability of the taxpayer under an assessment was capable of being made, however, after the expiration of three years from the date upon which the tax became due and payable under the assessment.

A taxpayer, dissatisfied with his assessment, had the right to lodge an objection against that assessment which in effect was a formal request for review of the assessment. This assessment was required to be lodged within sixty days. The review of the objection was carried out by the Taxation Office. If the taxpayer was not satisfied with the results of the review of his objection he had further avenues of appeal through the court system.

Taxpayers have the right to appeal the result of their objection to the Courts.

The Self Assessment Approach

In a tax regime which embraces full self assessment the assessing procedure changes in that, although taxpayers are required to lodge income tax returns there is little, if any, actual assessing activity undertaken by the Taxation Office when the return is lodged. Obvious errors and omissions will be picked up but there would be no detailed review of the content of the return unless some suspicion warranted further review.

Rather, when the return is lodged the Taxation Office is deemed to have made an assessment of the relevant taxable income and of the amount of tax payable on that relevant income. The lodging of the return itself is deemed to constitute the issue of the assessment served upon the taxpayer on that day.

In a partial self assessment system this procedure may be undertaken but, as is the case in Australia, actual paper assessments are, in fact, issued to taxpayers following the lodgement of their returns. This reflects the complexities of the Australian tax law caused through rebates and allowances which still require taxation assistance in order to determine taxpayers' liabilities. Despite the issuing of the assessment, the deeming process is still applicable.

As with the previous system, the Taxation Office has the right to issue default assessments in the event of taxpayers not lodging returns and the Commissioner being of the opinion that the taxpayer had in fact derived income.

Under self assessment taxpayers now have up to four years within which to lodge objections against "assessments". Until the available objection period elapses, the taxpayer may lodge more than one objection against an assessment.

The concept of lodging an assessment in a self assessment situation appears to be foreign but lodgement of such objection may be appropriate in order to protect a taxpayer's rights. If a taxpayer is uncertain whether he has taken the correct course of action this procedure may enable him to take the "safe" course of action whilst at the same time lodging an objection in support of his chosen course of action.

Although the period during which objections against assessments may be lodged has been extended to four years it should be noted that such extension may not apply to further avenues of appeal, e.g. references to AAT or courts or lodging of appeals to higher courts.

Taxpayers still have the right to amend their returns, as in the past, but an amendment affecting a reduction of his liability is not to be made after the end of four years from the date on which the assessment is deemed to have been made or the date on which the tax became due and payable under the assessment.

The Taxation Office has four years within which to amend the taxpayer's assessment and to increase the level of tax payable. Limited scope for extension of this period are available.

If the amendment increases the taxpayer's liability the taxpayer can object to the amendment until the later of four years after the original assessment or sixty days after the

amended assessment was issued.

The Commissioner is also entitled to make amendments to the assessment regardless of whether or not full and true disclosure has been made in the return. Generally, the Commissioner may only make amendments within the four year period, but the law provides him with limited rights to extend that period.

If an assessment has been amended which resulted in a reduction of tax liability for the taxpayer and the Commissioner has accepted a statement made by the taxpayer he may only further amend the assessment in a way that increases the liability to the taxpayer within a period of four years from the date of service of the notice of amendment.

Perceived Difficulties under the Existing System

Although not directly related to the subject of self assessment, it should be noted that prior to the introduction of self assessment there existed in Australia a significant lack of co-operation between taxpayers and the Taxation Office in relation to income tax compliance. A definite adversarial attitude had developed between the taxpayer and the revenue collector.

The blame for this cannot by laid entirely at the feet of the existing assessing system, although the inadequacy of the Taxation Administration of the time was a significant factor in allowing the attitude to develop. It has been said that the antagonism between taxpayer and revenue collector increased rapidly as a result of the growth of the tax avoidance industry in the 1970s which was, unwittingly, supported by attitudes of the judiciary which endorsed the "black letter" approach to interpretation of the law.

To some extent, the lodging of a tax return became somewhat of a game. If a taxpayer could prepare his income tax return in such a way as to be assessed without challenge, the issuing of an assessment was prima facie evidence that his return had been accepted without question. Provided he had made "full and true disclosure" he then had only to wait three years before his return was free from amendment. If he had not made full and true disclosure and assuming there was no fraud or evasion, he had to wait six years for that freedom.

In reality and with hindsight, the Taxation Office was faced with an almost impossible task of ensuring that taxpayers complied with their obligations under the law. The procedures then in place were simply not satisfactory to achieve what was necessary.

The sheer volume of returns compared with the amount of resources available made the task of the income tax assessor very difficult. Because of staff shortages required to effectively carry out their tasks and in an effort to be 'efficient', staff within the Taxation Office were constrained in the amount of time which they could spend reviewing assessments.

This lack of staff motivation at the assessing levels, together with the ineffectual assessing procedures themselves, would not have created significant incentive for existing potential employees of the Taxation Office.

Although the computer system, including both hardware and software, used by the Taxation Office at that time was sufficient to perform arithmetical and word processing functions, it was not being widely used in a "forensic" sense and in fact may not have been adequate for the task. e.g. there was little matching of income items expressed in taxpayers returns with corresponding payments by other taxpayer companies such as dividends or interest.

If an assessment was issued which was challenged by the taxpayer the onus of proof that the assessment was excessive clearly rested with the taxpayer. As indicated however, where there had been full and true disclosure or eve without full and true disclosure bu excluding fraud and evasion, the onu of "getting it right" and within the tim allowed, effectively rested on th Taxation Office.

Needless to say many hours o professional time was spent in th Courts arguing the finer points of such issues as 'full and true disclosure' and whether actions constituted 'fraud and evasion'.

A considerable amount of professional and adviser time was also taken up in determining creative disclosure or creative non-disclosure.

This apparent weakness in the assessing procedures created significant frustration in the Taxation Office which sometimes led to the taking o surveillance and attempted information seeking actions which were reminiscen of a scene from a "Rambo" movie actions which were quite obviously held to be outside the powers of the Taxation Office.

In other words, some taxpayers and their advisers were acting like members of an adolescent gang, while the Taxation Office was acting like the local police force. What the Government wanted was a more mature approach to the serious business of efficient revenue collection.

For completeness, it should also be noted that the weaknesses discussed above tended to benefit those taxpayers who were not salary and wage earners or otherwise subject to deduction of tax at the source. There are limits to the amount of deductions available to a salary and wage earner.

Does Self Assessment Correct these Difficulties?

Clearly the change in assessing procedures places the onus of responsibility of complying with the law clearly where the law intended it, i.e. on the taxpayer and not on the Taxation Office.

The corollary is of course that taxpayers now consider that they are disadvantaged as their exposure to review and possibly amendment may be open more ended, i.e. there may be no time limit beyond which amendment may not be made. The greatest complaint from taxpayers is that there now no certainty, within a reasonable period of time, that their tax liability is final'. This does have a significant impact on financial reporting and auditing guidelines.

The arguments about full and true disclosure have virtually disappeared. The onus is now on the taxpayer to ensure that sufficient records are maintained to support claims made in returns, should the taxpayer be asked to substantiate them.

The need for taxpayers and their advisers to be creative in preparing tax returns has been eliminated as there is very little supporting information required to be included in tax returns.

The elimination of 'desk assessments' has resulted in the virtual total dismantling of the general assessing section within the Taxation Office. Correspondingly, there has been an increase in the investigation and audit teams within the Taxation Office. This in turn enables a different approach to be taken to the task of 'assessing'. In short, the Taxation Office is able to work smarter.

The significant upgrading of computer power has enabled the Taxation Office to adopt a more structured and effective approach to the task of revenue collecting.

Although there may be less information required to be included in the tax return under self assessment, the type of information which is requested is more searching, from an investigation or audit point of view. For example, information is sought about transfer pricing and whether or not the taxpayer has adopted one or more of the recognised methods of determining the correct amount of taxable income in an overseas contract. All of the questions require a positive answer, which, if not given are followed up. If the answer proves, on examination to be wrong, the taxpayer may be exposed to penalties.

It is true to say that during the last decade there has been an improvement in the adversarial attitude which exists between the Taxation Office and the taxpayers in general, although this is a view may not necessarily be shared by some segments of the Taxation Office or by all taxpayers or their representatives. To the extent to which it is true however, the introduction of self assessment has been one of the factors which has contributed to this change.

Self Assessment - The Flow On Effects

The introduction of self assessment has a flow through effect resulting in changes to all sections involved in the taxation industry. For example, taxpayers have obtained a degree of "freedom" in that returns prepared and lodged by them will be accepted on face value and without challenge. The "price", however, for this new found freedom is, of course, an increased penalty regime and the likelihood of increased exposure to some form of investigation, review and/or audit. (I shall cover both of these separately.) Some of the more general flow on effects are as follows:-

Re-skilling the Taxation Office

The elimination of the need to check assessments means that the emphasis previously directed towards the assessing function within the Taxation Office is now redirected towards the function of review and audit. This has required a significant retraining program by the Taxation Office as the skills necessary to carry out investigation review and audit may not necessarily be the skills needed to undertake the former assessment program.

Changes to the law

There will be changes required to taxation law. No longer is it necessary for the law to contain the concept of the revenue authorities having a discretionary power. The responsibility for lodging a return which is "correct" within the terms of the law rests entirely with the taxpayer. This is not to say that a taxpayer cannot seek an opinion from the taxation authorities; taxpayers can seek private rulings from the Taxation Office. It merely recognises that the taxation authorities are not required to make a determination as part of the assessing process.

The Tax Return

The actual tax return itself has undergone significant change. Before self assessment the return was merely a statement of income and deductions, information and answers. there was very little in the way of instruction contained on the forms. Income tax returns post the introduction of self assessment now include detailed and comprehensive instruction notes aimed at assisting taxpayers in completing their returns in the correct manner.

For most individual taxpayers who do not use an accountant or tax agent, a combined instruction booklet and tax return preparation document known as "Tax Pack" is the main source of information upon which they prepare their returns.

The concept of Tax Pack is to enable the taxpayers to complete their returns without the necessity of incurring costs through the engagement of accountants or tax agents. (Sadly however, due to the complexities of our laws, Tax Pack in its current form fails in its object of simplicity which often requires taxpayers to seek instruction from accountants and tax agents on interpretation of Tax Pack.)

Need for increased Taxation Office assistance

The onus of "getting it right" clearly rests with the taxpayer. The onus of educating the taxpayer rests, however, to a significant extent, on the Taxation Office. It is totally incomprehensible to expect taxpayers not otherwise trained in tax law to be able to comply with the

requirements of self assessment without external assistance.

It should also be recognised that there are also taxpayers within the tax network who are not legally or numerate minded. These people are simply incapable of comprehending complex tax law or complying with their tax requirements without external assistance.

To this extent, the Taxation Office has been required to increase substantially the voluntary assistance which it gives to taxpayers for the purpose of satisfying their obligations under self assessment. This includes establishing more "user friendly" inquiry lines, issuing of general instruction booklets concerning specific aspects of income tax law such as capital gains tax

It has also resulted in a more "open" approach to telephone inquiries. In the past it was not the responsibility or duty of a taxation official to assist a taxpayer in the interpretation of the law. It was seen to be his responsibility to obtain that information in the best way he could either through his accountant or through a lawyer. Now, under self assessment, taxpayers have the right to seek information in telephone requests from the Taxation Office.

The Ruling Program

Self assessment also brought into being a program of Public Rulings. These are a series of rulings issued by the Taxation Office in respect of various aspects of taxation law. In these rulings the Taxation Office sets out its interpretation of the particular area of law or sets the parameters within which it will accept interpretations of the law.

To the extent to which rulings are "public rulings" (by definition) they will be binding against the Commissioner i.e. taxpayers can rely on a ruling in defence of action taken in a particular return. (Although in a recent Australian tax case the Commissioner argued that his own ruling was incorrect).

Views expressed in the rulings do not have support of law but are the considered view of the Taxation Office and, as such, is the official opinion on the matter which is the subject of the ruling. As such, if a taxpayer chooses to ignore the ruling he will be subject to a penalty. Public rulings are binding by all taxpayer against the Commissioner.

Taxpayers are deemed to be aware of public rulings and therefore any position taken by taxpayers in their returns which are contrary to the position stated in a public ruling will be automatically subjected to a penalty. On appeal, should the taxpayer's view be preferred over the Tax Office view such penalty will obviously be revoked.

Due to the significant role which rulings will play in self assessment they are frequently issued in draft and comments invited from interested parties such as professional advisers before a final ruling is issued.

In recent years the Taxation Office has created a Rulings Panel the members of which include some senior members within the taxation profession, whose responsibility it is to ensure that the draft ruling, when issued, is commercially realistic and is a fair reflection of interpretation of the law.

In addition to the rulings program the Commissioner issues determinations which are public answers to frequently asked questions on specific aspects of the law. These are not public rulings and usually not binding on the Commissioner.

Under self assessment it is no longer necessary to incorporate within the law, the power of the Commissioner to reach an opinion or to make a determination in relation to the application to any particular section of the Act. It is, however, necessary to provide taxpayers with the opportunity to seek an opinion from the Taxation Office in respect of matters in which they had concerns. This gave rise to the private ruling system.

Under a private ruling system, the taxpayer may seek an opinion from the Taxation Office in relation to a taxati matter. For that purpose, the taxpa is required to set out all facts relev to the matter in question.

The ruling subsequently issued by Commissioner is binding on Commissioner but only so far as applicant taxpayer is concerned. Oth taxpayers are not entitled to ta advantage of the ruling even thou their facts may be identical or simi to those of the applicant taxpayer.

Decisions made under a private ruli are subject to judicial review, i.e. th may be taken to a court of law as thou they were, in fact, an assessment. It for this reason that the information be provided in the request for ruli must be complete.

Private rulings are also confined to t particular situations and circumstanc set out in the application, eg a material change in the actual carryi out of the steps which are the subject the ruling may result in the decision the ruling being reversed.

Private rulings also apply only to t specific period stated in the ruling.

In more recent times a concept "Product Rulings" has also bee introduced. This enables classes taxpayers who have similar interests the same product to seek a class ruli in relation to that matter which binding by all of them against th Commissioner. Such would be th situation where taxpayers invest in syndicated movie project.

The ruling system applies not only income tax law but also applies to oth laws such as fringe benefits tax.

Penalties Under Self Assessment

With the increased responsibility place on taxpayers there are also increase penalties which may be imposed on th taxpayer if they breach the requiremen of the income tax law. This includes la lodgement of returns, late payment lodgement of incorrect returns.

The concept of self assessment proceeds on the basis that the taxpayer is aware of his rights and obligations and responsibilities under the Income Tax Assessment Act. These extend to the lodgement of his return and what is to be included within it and his obligations to pay his tax when it falls due.

Penalties are imposed where there is a "tax shortfall" i.e. where the amount by which the taxpayer's stated tax for that year is less than the amount of "proper tax" for that year. The term "proper tax" is defined to mean the tax properly payable by the taxpayer in respect of the year on his taxable income after allowing for all credit properly allowable to the taxpayer.

Penalties arise in the following situations:

- where a tax shortfall is caused by failure on the part of the taxpayer to take "reasonable care" (25%),
- where the tax shortfall is caused by the taxpayer's "recklessness" (50%),
- when a tax shortfall is caused by the taxpayer's "intentional disregard of the Act or Regulation" (75%).
- where the tax shortfall exceeds a certain threshold and the taxpayer's position was not "reasonably arguable"(25%).
- where the shortfall is caused by the taxpayer entering into a "tax scheme" (50%) or
- where the shortfall is caused by a disregard of a private ruling (25%).

The concepts of "reasonable care" and "reasonably arguable position" are important concepts in the self assessing system.

The Concept of Reasonable Care

It is surprising that the law does not expand the general, every day meaning of the words "reasonable care". The explanatory memorandum and an information paper issued when the law was introduced, do however shed some light on this phrase. The explanatory memorandum states that:

"the reasonable care test requires a taxpayer to exercise the care that a reasonable ordinary person would be likely to have exercised in the circumstances of the taxpayer t fulfil the taxpayer's tax obligations ……..

"The test looks to whether an ordinary person, in all circumstances as a taxpayer would have foreseen as a reasonable probability or likelihood the prospect that the act or failure to act would result in a shortfall.

"It is not a question of whether the taxpayer actually foresaw the probably impact of the act or failure to act but whether an ordinary person in all the circumstances would have foreseen it. The test does not depend on the actual intentions of the taxpayer."

The test also extends to an examination of whether or not appropriate records were maintained to determine whether or not the taxpayer made reasonable attempts to comply with their obligations.

The August 1991 information paper states that the test is an objective one although it takes into account subjective factors.

It is not certain whether the comments in the explanatory memorandum are of any assistance in interpreting the concept of "reasonable care". What we did have, however, was the introduced into our taxation system, through the back door, of the requirement to consider our approach to taxation through the eyes of "a reasonable ordinary person" What this person was to look like and how he was to think was not explained..

A former senior member of the Administrative Appeals Tribunal, Mr Peter Roach, pointed out the difficulty in applying this concept. In a situation where a taxpayer has made an error of recording or of calculation and the question is whether or not he has taken "reasonable care" in respect of his taxation affairs, Mr Roach observes that:

"The problem arises because the "reasonable man" of the law is perfect, or nearly so. He drives carefully at reasonable speeds on the correct side of the road with seat belt done etc; never allowing his attention to be distracted. If he fails to meet those standards, he falls below the standard of "reasonable care" required of him."

Mr Roach says further:

"If that is the standard to be applied to taxpayers, it seems to me there will be few who, having made errors which are unintentional and uncharacteristic, can still claim that all "reasonable care" was taken." (Ref: Charter, Vol. 63. Number 5)

Tax Agents and the Concept of Reasonable Care

It should also be pointed out, lest accountants and tax agents consider that they are free from the concept of reasonable care, that the failure of a registered tax agent to take reasonable care in relation to the affairs of their clients, may also result in a penalty for the client taxpayer.

Where a taxpayer is penalised for a breach of the tax law, the fact that the breach may have been caused by the actions of the taxpayer's tax agent is not an argument which will negate the penalty. In such circumstances, however, the taxpayer he may seek recovery action from the tax agent under a specific section of our tax law in respect of those penalties.

It has also been suggested that the standard of reasonable care applying to a tax agent who holds himself or herself out to be a competent tax professional must be far higher than that which applies to the ordinary taxpayer. In a 1987 decision of the Supreme Court of South Australia King, C J said, in the course of his judgement:

"The very purpose of engaging tax advisers and accountants is to ensure that the returns are prepared upon a correct basis. Any calculations submitted by the taxpayer to

his tax expert is necessarily submitted on the basis that its conformity with the tax law and correct tax and accounting practice will be verified by the expert. The taxpayer and his staff in the absence of agreement to the contrary by furnishing such information, assume responsibility for its conformity to tax law and practice. If the taxpayer were to be considered to be lacking in reasonable care for his own interests for that reason, much of the advantages of engaging expert would be lost. The taxpayer, as it seems to me, cannot be expected to exercise skill or knowledge in relation to such matters. He is entitled to rely on the tax expert whom he has engaged to check any calculations submitted by him to ensure their conformity to tax law and practice and in that way to ensure that the tax returns are correct."

A Reasonably Arguable Position

Penalties will be influenced also by whether or not a taxpayer has a reasonably arguable position in relation to a claim made by him. This allows the taxpayer to show whether the position taken was reasonably arguable given an objective analysis of a contentious area of the law.

The law provides that if a taxpayer has a shortfall for a year and such shortfall was caused by the taxpayer treating the income tax law as applying in relation to a matter in a particular way and it was not reasonably arguable that the way in which the application of the law was treated was correct, the taxpayer is liable to pay a penalty of 25% of the shortfall. (For this penalty to apply the shortfall must be greater than the higher of $10,000 or 1% of the taxpayer's return tax for that year.)

Contrary to the concept of reasonable care, the law does address the concept of reasonably arguable position. It provides that a position will be a reasonably arguable position if the position being put is "about as likely as not correct", having regard to the relevant authorities.

For the purpose of this particular part of the legislation, the term "authority" is defined to include the following:

- an income tax law
- relevant parts of the Acts Interpretation Act 1901
- a decision of a Court (whether or not Australian), the Tribunal or a Board of Review
- a public ruling (as defined)

Although of increasingly less significance, following the removal from our tax laws of most discretionary powers reserved to the Commissioner before the introduction of self assessment, in relation to the definition of reasonably arguable position, the law goes on to state that if the treatment of the application of a law assumed that the Commissioner would exercise a discretion in a particular way the correctness of the treatment is reasonably arguable if the exercise of the Commissioner's discretion would be reasonably arguably in accordance with the law.

And further, the exercise or assumed exercise by the Commissioner of a discretion is reasonably arguably in accordance with the law if, having regard to the relevant authorities it would be concluded that a Court would be about as likely as not to hold that the exercise is or would be in accordance with the law.

For the purpose of the law, the Commissioner exercises discretion if he:

- forms an opinion;
- refuses or fails to form an opinion;
- he attains a state of mind, or refuses or fails to attain a state of mind;
- makes a determination or refuses or fails to make a determination; or
- exercise a power or refuses to exercise a power.

Although a moot point, it is not necessary that the taxpayer's view is the "better view". It is sufficient if the taxpayer's view is about "as likely as not" and not "more likely than not be correct. In the explanat memorandum however the follow warnings are issued:

".....the reasonably arguable posit standard would not be satisfied if a taxpa makes a position which is not defensible that is fairly unlikely to prevail in co On the contrary, the strength of taxpayer's argument should be sufficien support a reasonable expectation that taxpayer could win in court. The taxpay argument should be cogent, well groun and considerable in its persuasiveness."

The move towards self assessment also part of a desire by the Governme for taxpayers to take more person control over their taxation affairs. T complexity of reaching a conclusion th a taxpayer's position is "reasonab arguable" will be somewhat daunting many taxpayers.

For example the definition of "authorit is an inclusive definition and is n exhaustive. There is also the necessit for taxpayers to understand the impa of the Acts Interpretation Act, a understanding which is not familiar t most general taxpayers.

The labyrinth of material which taxpayer may be required to researc in reaching his reasonably arguabl position may, rather than simplify taxpayer's reporting requirements, hav the opposite effect, i.e. to drive th taxpayer into the arms of accountants tax agents and/or lawyers in an attemp to avoid the penalties which failure t achieve the correct position will bring

The taxpayer of course does have a alternative and that is to seek a privat ruling on the matter from the Taxation Office.

Review, Investigations and Audits

Under self assessment the workload o the Taxation Office has swung from assessing, to education on the one hand and review, investigation and audit on the other hand. Under this latter concept, it is necessary for the Taxation Office to ensure that the concepts of self

assessment are being complied with. To some extent, this is akin to a statistical sampling approach undertaken in an audit procedure.

This concept is also adopted in many other countries in the world, notably in the United States of America where the concept of tax audit is an everyday concept.

The Taxation Office has improved its computer technology and is making greater use of the concept of "matching". By the use of this mechanism income is cross referenced from information of paying companies to individual tax returns, e.g. dividends, interest, etc.

Audits can take different forms.

(a) Desk Audits

Desk audits principally focus on salaries and wage earners, small business taxpayers and investors. Under a desk audit concept, a taxpayer is invited to attend an interview in the Taxation Office and to bring with him details in support of and in substantiation of claims made in the returns. Inquiries are generally limited to specific checks of income, deductions and rebate items in the returns. Returns are selected for audit for various reasons including:

- large or unusual claims
- knowledge that the taxpayer has ownership or access to "luxury lifestyle assets"
- variances in business profitability from year to year
- discrepancies detected by computerised auditing systems against an industry "norm"
- discrepancies arising through computer cross checks

(b) Source Deduction Audits

A source deduction audit program covers individuals and businesses that are or should be involved in deduction of tax from payments at the source. These audits are carried out on the taxpayer's records.

(c) Business Audits

A business audit program covers those taxpayers whose income is derived from business activities. It does not cover taxpayers involved in "complex" audit programs. This review also covers superannuation funds and fringe benefits tax audits. These audits are geared towards providing the Taxation Office with information about current levels of compliance within particular industries.

Taxpayers can be selected for audit based on several criteria. Selection may be on an industry by industry basis, i.e. a collective review of the tax returns of all taxi drivers, accountants or lawyers. A selection can be made based on the risk that certain industries may be in a better position than others to avoid their responsibilities, e.g. businesses dealing largely with cash transactions such as hotels, convenience stores etc. Alternatively, taxpayers can be selected for audit based on the size of their transactions or at random.

(d) Complex Audits

Complex audits encompass strategic examination and large case audits. Strategic examinations are audits of companies and trusts which operate internationally and/or domestically with complex business and financial arrangements. The audit covers both international an non international issues. International issues include cases identified by independent studies of profit shifting practices, interest withholding tax, royalties, international loans and other profit shifting arrangements.

This type of audit is carried out by a special team of qualified and experienced tax officers. The focus of the complex audit program has been on Australia's largest corporate groups, particularly the top 100 companies. It is expected that the focus will be widened to include companies below the 100 group.

In addition to the selection criteria mentioned above, companies are selected for audit based on their size, diversity, complexity, nature of business and potential problem areas.

Large case audit programs can take up to two years to complete.

There are guidelines established for the conduct of all types of audit. These guidelines have been reviewed by and commented on by various professional bodies. The guidelines are readily available to all taxpayers and their advisers.

Taxpayers' Charter

I mentioned at the beginning of this paper that the move to self assessment requires a greater degree of co-operation between taxpayer and taxation official than that which existed prior to the introduction of self assessment. For self assessment to be effective, there had to be a move towards a more open relationship between the taxpayer and the tax gatherer, one that is not charged with emotion and suspicion.

Several measures were considered to achieve this aim. The establishment of a Tax Law Improvement Project ("TLIP") was established with the target of rewriting the existing taxation laws in language which is more acceptable to the taxpaying public. At the same time the rather cumbersome numbering system which had evolved since the Act was introduced in 1936, was revised. The intention in undertaking the TLIP rewrite was not to write new law but merely to express existing law in clearer language.

In a similar vein, the decision was taken

to issue a Taxpayers' Charter. Such charter will follow the lines of similar documents which exist in other countries. The aim of the document is to set out the rights and responsibilities of taxpayers under the Income Tax Legislation. At the same time the document sets out the rights and obligations of the Taxation Office in dealing with taxpayers.

The Taxpayers' Charter does not have the force of law although, before its final adoption by Federal Government, it was canvassed widely to representatives of professional and community bodies and through those representative bodies to the members who they represent. It can safely be said that every opportunity was given to the general public to make comments or suggestions in relation to the Charter. It is another question whether or not that opportunity was taken up outside those bodies who were actively interested in the development of the Charter.

The rights which are covered in the Taxpayers' Charter are the rights which are both social rights and statutory rights. Attached is a schedule which summarises the rights covered by the Charter, distinguishing between these two.

It should be observed that many of these rights were not newly created by the Charter. They are rights which already existed in various forms and in various pieces of legislation both State and Federal. One of the achievements of the Taxpayers' Charter is to make taxpayers fully aware of their rights and where to find them.

The basic document of the Taxpayers' Charter is in the form of an overview which sets out a summary of the major rights and obligations of taxpayers. The initial document is supplemented by expanded booklets giving further information in relation to each of the particular rights. A list of booklets available from the Taxation Office is also set out on a schedule attached.

The Taxpayers' Charter does more than establish rights and obligations of taxpayers. As indicated, it is a significant contributor to establishing a new framework of relationship between the taxpayer and the Taxation Office. Issues raised in the Taxpayers' Charter caused both parties to focus on the relationship which must exist between the two if a meaningful tax system is to be established.

Whilst recognising the good which the Taxpayers' Charter may achieve, there are still those who insist that the Charter should have the force of law. Many of these insist that the Charter is nothing more than a "mission statement" and taxpayers will have no real course of action against the Taxation Office. Sociologists, on the other hand, suggest that the lower key "co-operative" approach will achieve greater success than the existence of legislative control.

I do not propose, in this paper, to discuss individual items contained within the Taxpayers' Charter except to touch on two points, both of which relate to options available to the taxpayer in the event of him being dissatisfied with treatment which he has received.

Firstly the Charter suggests that if you believe that your legal rights or the standards outlined in the Charter have not been met you should firstly tell the tax officer with whom you are dealing and talk to that officer's manager if you are still not satisfied. If that does not achieve any result, it is suggested that the taxpayer should ring the Problem Resolution Service which is a specific group established within the Taxation Office. One cannot help feeling that taking that course of action may not necessarily be seen as being 'independent'.

Secondly, where does a taxpayer go if he is not satisfied with the results achieved by the Problem Resolution Service? Outside the Taxpayers' Charter there exists a Taxation Ombudsman, a Government sponsored role whose duty is to investigate Taxation Office activities and report to the Government. Until recently that role has been occupied by an independent i.e. not someone of the Taxation Office choosing. Following the departure the incumbent, a former Tax Mana in a large firm of Charter Accountants, it has recently be announced that the position will taken by a former officer from wit the Taxation Office ranks. This somewhat disappointing as no ma how independent the person is in th actions they will always be seen to b representative of the Taxation Office

Self Assessment - A Report Card?

After some ten years experience wi self assessment, in its various stages, t question must be asked as to wheth the exercise of introducing se assessment has been a success or failu The answer to that question may va depending on the people of whom y ask the question.

From the Taxation Office point of vie it has almost certainly resulted in much needed revision of its wo practices, better use of resources and more efficient way of achieving result The mindless and totally ineffecti assessing procedures of the past ha given way to a more investigatory an rewarding process of reviewin checking and auditing.

Although an indirect benefit, the chang in Taxation Office procedures has mea a change in its human resource need The more interesting workload ha assisted in attracting a level of employe more appropriate to handle th approach required under se assessment. This in turn enables th Taxation Office to achieve better result

The downside from the Taxation Offic point of view is the increased amou of effort and resources required to me the demands of the education need which self assessment brings. There ha been a significant growth in the issuin of public rulings under the se assessment systems. There has als been a significant increase in the numb of private ruling requests. This i however, the price which must be pai to achieve the results required.

It must be stated that if rulings issue

by the Taxation Office are to be effective and respected tools in the income tax assessing procedure they must be of the highest standard. It is not sufficient for the Commissioner merely to state his opinion. His opinion must be supported by thorough research of the "authorities" in the same manner as he expects taxpayers to research their position under the "reasonably arguable position" approach. This includes detailed research of legislation and case law and the building up of a soundly based opinion. It also requires that the Commissioner consider alternatives arguments and apply the same tests to those alternative arguments. This is all part of the broader education requirement

To offset its burden the Taxation Office is imposing itself on tax agents and shedding some of its work load on to the agents in it's bid to keep taxpayers honest. The Taxation Office is openly and unashamedly targeting tax agents whose clients show unusual or abnormal results and seeking from those tax agents information in relation to their clients.

Increasingly, tax agents are being asked and forced to provide more information and to retain more records in relation to their clients' affairs. This in turn increases the cost of compliance, a cost not necessarily capable of being passed on to a client. . No payment is made for this assistance.

There is a further significant impact on accountants and tax agents. These professionals have responsibilities to their taxpayers and under the Income Tax Assessment Act. As will be seen later, these responsibilities may be further exacerbated by the effects of the Taxpayers' Charter and the Review of Standards for the Tax Profession.

Taxpayers have "benefited" in that, contrary to the position which existed before self assessment, they are being accepted as being honest in relation to their taxation affairs until proved otherwise. It is no longer automatically assumed that taxpayers cheat. The proof of whether or not they in fact take their responsibility seriously may well rest in the results of the various audit activities undertaken by the taxation authorities.

There is an additional burden on taxpayers in that they are required to retain documentation in anticipation of an investigation or audit. Such documentation can include detailed recordings of transactions necessary to support positions taken in tax returns. The threat of penalties requires them to take more care and to research their position concerning statements made in their tax returns more than they would have under the pre self assessment system.

The amount of time therefore spent by taxpayers in administering their tax affairs will increase. The Government of course would argue that this is time which should have been spent on their tax affairs anyway in the interests of "good business housekeeping".

Overall it can be said that the introduction of self assessment, along with some of the other changes I have mentioned, has been beneficial to the Australian tax system. There is and will continue to be room for improvement but in my opinion there has been sufficient improvement over the last ten years for us to have confidence that there will be greater improvements in the future - we are well on the way to adulthood.

RIGHTS COVERED IN THE TAXPAYERS' CHARTER

The Taxpayers' Charter: Rights and responsibilities	Relationship building*	Statutory rights and obligations*
Treat you as being honest unless you act otherwise	Yes	
Treat you fairly and reasonably	Yes	
Respect your privacy		Yes
Keep information confidential		Yes
Give access to information held about you		Yes
Give an explanation of decisions	Yes	Yes
Give professional service	Yes	
Right to representation by a person of your choice	Yes	
Right to get advice from your advisers about your tax affairs	Yes	
Give timely assistance to help you understand and meet your obligations	Yes	
Give timely information and advice that you can rely on	Yes	Yes
Seek to minimise your costs in complying with the tax laws	Yes	
Right to independent review and right of complaint to Ombudsman		Yes
You must be truthful in dealing with the Tax Office		Yes
You must keep proper records		Yes
You must take proper care when preparing your tax returns and other documents		Yes
You must lodge tax returns and other documents by the due date		Yes
You must provide accurate responses to information requests		Yes
You must pay your taxes and other amounts by the due date		Yes
We expect you to co-operate with our staff and treat then with courtesy and consideration	Yes	
We expect you to provide timely responses to requests for information	Yes	
* Only one of these columns is completed unless statutory protection is limited		

SELF ASSESSMENT IN AUSTRALIA A LIST OF PUBLICATIONS AVAILABLE FROM TAXATION OFFICE

The complete Taxpayers' Charter
Taxpayers' Charter Summary
Our Service Standards
Treating you fairly and reasonabl
Your honesty and the tax system
Our services
Your privacy and the confidentia your tax affairs
Information and advice to help y
How to get access to information
Who can held you with your tax affairs
If you are not satisfied
Compensation and other financia remedies
If you are subject to enquiry or a
Fair use of our access and informa gathering powers
Reducing your costs in complyin with the tax laws
Keeping records
Lodging your tax returns, other f and information
Paying your taxes

PENALTY REGIME

- where a tax shortfall is caused failure on the part of the taxpa to take "reasonable care" (25%)
- where the tax shortfall is cause the taxpayer's "recklessness" (5
- when a tax shortfall is caused b the taxpayer's "intentional disregard of the Act or Regulati (75%).
- where the tax shortfall exceeds certain threshold and the taxpayer's position was not "reasonably arguable"(25%).
- where the shortfall is caused by taxpayer entering into a "tax scheme" (50%) or
- where the shortfall is caused by disregard of a private ruling (25

ASPECTS OF STAMP DUTY IN MALAYSIA

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BACKGROUND

mp duty is a very important consideration for every siness transaction in Malaysia that involves instruments[1]. ically, there is no rule which directly compels a person to stamp duty but the "threat" of having the instrument dmissible as evidence in court will prompt everyone to mp the instruments (documents) properly. Moreover, an rument which is not duly stamped would not be accepted egistration by a public officer for any purpose[2].

mp duty has a colourful history. Contrary to popular belief, was not the British, but the Dutch who first introduced mp duty in 1624. The Dutch were desperate to raise money fighting a war with Spain and held a competition for the ention of new taxes. The winner was the inventor of stamp ty. Unfortunately his name has been lost to history. The itish introduced it 70 years later in 1694.

mp duty may seem to have taken a secondary role in laysia compared to other direct taxes but it has a much ger history than income tax. In Peninsular Malaysia, stamp ty was first imposed by the Stamp Act, 1949. The Stamp ty Act was essentially based on the structure and principles mbodied in the United Kingdom Act, 1891. While this may true, developments in the stamp duty enactment in the ited Kingdom have not been intimately ensued in Malaysia. dequate care should, therefore, be taken in applying United gdom decisions to local cases. Stamp duty assessments Malaysia are made by the Inland Revenue Board (IRB) and ey are in accordance with, supported by, and have a ndation in law.

his article focuses on the administration and assessment of mp duty in Malaysia. The basic principles of stamp duty e also covered in the paper. A further section is devoted to tline the structure of the Stamp Act 1949.

1.1 Definition of Stamp Duty

Stamp Duty is defined as a tax levied on a document which is satisfied either by purchasing and putting on the document an adhesive stamp of the value required and cancelling that stamp or by paying money to the value required to the stamp duty office which then impresses a stamp to the value on the document.

1.2 Stamp Duty Collection

It is interesting to note that stamp duty produces much more than other direct taxes except, of course, income tax (See Table 1). In 1997, IRB collected RM27,221 million from income tax[3], RM524 million from real property gains tax (RPGT) and about RM3 million from Labuan Off-shore Activities tax. Stamp duty, however, yielded RM2,718 million or 6.9 percent of direct tax collections. About 10 million was collected from other taxes comprising film hire duty, estate duty and miscellaneous taxes.

Table 1
DIRECT TAX COLLECTIONS (1997)

	(RM million)
Income Tax	27,221
Stamp Duty	2,718
RPGT	524
Labuan Off-shore Tax	3
Others	10
TOTAL	**39,476**

There has been a steady increase in the collection of stamp duty over the years 1992 to 1997 (See Table2). In 1992, the yield from stamp duty was 7.73 percent (RM735 million) of total income tax collected but in 1997 this proportion rose to 8.92 percent (RM2,718 million).

Table 2
THE YIELD FROM STAMP DUTY (1992 TO 1997)

	(RM Million)
1992	735
1993	1,195
1994	2,443
1995	2,171
1996	2,672
1997	2,718

1.3 Administration of Stamp Duty

The Head of the agency for collection of stamp duty is the Collector of Stamp Duties who by law is appointed by the Minister of Finance for the purposes of carrying out the provisions of the legislation governing stamp duty in Malaysia. With effect from I January 1978, the Director-General on Inland Revenue is concurrently the Collector of Stamp Duties in Malaysia.

The operation centres are managed by Deputy Collectors of Stamp Duties and these centres have responsibility for the assessment and collection of duties payable upon chargeable instruments. Machines, known as franking machines are provided to the stamp offices. These machines are used to frank upon a document a stamp or stamps to the value of the duty chargeable upon the document, against receipt of cash, cheque or draft in satisfaction of the duty assessed.

Table 3
DOCUMENTS PROCESSED AND PENALTIES COLLECTED (1992 TO 1996)*

Year	No. of Documents Processed (Million)	Documents Subject to Penalties	Penalties Collected (Million)
1992	9.29	30,614	2.59
1993	10.23	37,879	3.87
1994	11.83	48,169	4.94
1995	12.08	49,975	6.61
1996	10.49	51,385	9.03

* Figures for 1997 are not available

There has been a gradual increase in the number of documents processed, averaging a growth rate of 9.3 percent per annum for the years 1992 to 1995 (See Table 3). In 1996, however, the number of documents processed dropped by 13.2 percent to 10.49 million but the stamp duties collected rose by 23.5 percent to RM2.67 billion. There is also a direct relationship between the increase in the number of documents subject to penalties and the quantum of penalties collected (See Table 3). The number of documents subject to penalties increased by an annual average growth rate of 14.3 percent while penalties collected rose steadily averaging a growth rate of 36.9 percent per annum. For instance, in 1996, penalties collected rose by 36.6 percent to RM9.03 compared to the previous year.

2. FIXED AND AD VALOREM DUTY

The First Schedule to the Stamp Act 1949 (here after refer to as first Schedule) imposes basically two types of duti namely fixed and *ad valorem* duty. A fixed duty does n depend on the consideration involved. Thus, in the case o fire insurance policy (including renewals) a flat rate of RM2 is imposed irrespective of the sum involved. Likewise, in t case of a life insurance policy, a flat rate of RM10 is impos but no duty is payable where the sum insured does not exce RM5,000. Certain transfers are wholly exempt or subject t minimal fixed rate of stamp duty. For example, all instrume made by an offshore company in connection with an offsh business activity are wholly exempt from stamp duty. T stamp duty for the conveyance on sale[4] is, however, limit to RM100 for low-cost houses sold by developers. T concessionary fixed rate for low-cost houses is applicable f the period 1 January 1996 to 31 December 2000.

An *ad valorem* duty depends on the quantum of considerati Rates of *ad valorem* stamp duty chargeable on conveyan assignment or transfer of certain properties by way of sale voluntary disposition *inter vivos* are as follows :

	For ever RM100 part thereof
On the first RM100,000	RM 1
On the next RM400,000 up to RM500,000	RM 2
On the next RM1,500,000 up to RM2,000,000	RM 3
On any amount in excess of RM2,000,000	RM 4

If a landed property[5] was sold and conveyed fo consideration of RM3 million, the stamp duty levie RM94,000. This figure is arrived at as follows:

Chargeable amount RM		Rate	Stamp Duty RM
On the first	100,000	1%	1,000
On the next	400,000	2%	8,000
	500,000		9,000
On the next	1,500,000	3%	45,000
	2,000,000		54,000
On the next	1,000,000	4%	40,000
	3,000,000		94,000

3. RECENT AMENDMENTS

The 1999 Budget has introduced two new amendments (by way of exemptions) involving stamp duty. First, refinancing instruments for business loans will be exempted from stamp duty subject to the following conditions:

- The refinancing facility must represent a term loan for funding the original loan;
- The exemption must be limited to the funding of the balance of the original loan; and
- The sum of refinancing loan given by each bank for a syndicated loan must be stated on the refinancing loan agreement.

Currently, the stamp duty payable is RM2.50 for every RM500 which means a duty of RM5,000 would be incurred for every instrument valued at RM1 million. This amendment will make the cost of term-loan refinancing much cheaper. These new measure will be effective from 24 October 1998.

Secondly, all documentation relating to mergers would be exempted from stamp duty. This will assist in the various ongoing and prospective mergers among banks and financial institutions. The exemptions, however, will only be accorded to mergers that are completed between 24 October 1998 and 30 June 1999.

4. BASIC PRINCIPLES OF STAMP DUTY

4.1 Liability of Stamp Duty is on the Instrument and not the Transaction

Section 4(1) imposes a duty on any instrument (or document) specified in the First Schedule. Consequently, where a transaction is based on oral agreement with no document to stamp, the parties to the transaction may have no liability to pay any stamp duty.

Example 1

If X conveys a promise to marry Y orally, there is no stamp duty payable. But if X puts his promise in writing (letter etc.), the letter may be liable to stamp duty. The writer's promise may be regarded as a declaration to be made between the parties before a person authorised by law to administer on oath.

In the case of *Lim Teck Lee v The Commissioner of Stamp Duties (1956)*, it was held that the Stamp Act only taxes the instrument and not the transactions. According to Section 2 of the Stamp Act, "instrument" includes every written document.

4.2 Principal Instrument

Section 4 (3) states that where several instruments are employed for completing a transaction, only the principal instrument shall be chargeable with the duty and each of the other instruments (subsidiary instruments) shall be chargeable with a duty of RM10 only. The parties may determine for themselves which of the instruments shall be the principal instrument.

Accordingly, if the principal instrument is exempt, the subsidiary instruments are also exempt. In the case of *Cheah Choon Gan & Ors. v. Registrar of Titles, Kedah (1973)*, the interpretation of Section 4 (3) of the Stamp Act was considered. It was held that, since *ad valorem* duty has been paid on the memorandum of transfer of the greater value (which was RM70,200), the other two instruments (which were for RM62,000 and RM55,600 respectively), stamped with a 50 cents stamp each, were properly stamped too.

4.3 Liability Under Two Heads

If an instrument (or document) falls under two heads of charge, the Revenue Board has the right to assess it under the head which attracts the higher duty.

Example 2

If a person who borrowed money gives a simple written promise to the lender to repay the RM10,000 he borrowed in a month's time :

(i) if it is a promissory note, the duty is payable under sub-head 60 of the First Schedule ; and
(ii) if it is a covenant to repay the money in a month's time, the duty is taken under sub-head 27 (a) of the same Schedule.

The instrument will be assessed under (i) or (ii) stated above, whichever is the higher.

4.4 Instruments with Several Distinct Matters

Section 6 (a) of the Stamp Act provides that an instrument containing or relating to several distinct matters shall be separately and distinctly charged, as if they were separate instruments. This section prevents evasion of duty by recording several transactions in a single instrument.

Example 3

An instrument containing a lease of two plots of land for separate rent and with separate rights for renewal will be charged with separate duties for each land.

4.5 Form and Substance

It has been noted that under Section 4, stamp duty is imposed on a document and not on a transaction. The assessor has to determine the nature of the document before applying the relevant section (s) of the Stamp Act and charging duty under the relevant item or head of charge.

In certain cases, however, the stamp duty payable depends not only on the form but also on the substance of an agreement. In the United Kingdom case of *Eastern*

National Omnibus Co. v. IRC (1939), the substance of an agreement was looked into to determine the duty payable. The facts of the case are as follows :

There was an agreement by which one bus company sold its buses to another company and agreed that in return for monetary payment, it would withdraw its services from a particular area, help the other company to obtain licenses to operate its services in that area and would not compete with it. The court held that the agreement was in substance an agreement for the sale of goodwill of the first company's business and that *ad valorem duty* was payable on the value of the goodwill.

In like manner, the following was concluded in the case of *Malayan Palm Oil Bulking Co. Ltd. v. Commissioner of Stamps, Singapore* [1940]:

Stamp duty is levied on a document according to its effect. Parties to an instrument cannot put a label on an instrument and claim to pay duty on the instrument under the label the parties have placed. Indeed, parties cannot label an instrument a "license" when it is "lease" or an "agreement" when it is in effect a "conveyance on sale".

4.6 Evasion or Avoidance of Stamp Duty

If a person manipulates or omits a fact from an instrument in order to escape paying a duty which is payable, he is liable to be penalized. This act of evasion is illegal.

Example 4

A document pertaining to conveyance of sale shows a price of RM150,000 when in fact a sum of RM250,000 was paid.

Section 61 of the Stamp Act 1949 provides a penalty not exceeding RM2,500 for an offence of not setting forth all the facts and circumstances in an instrument in order to evade the payment of duty as required by Section 5.

Avoidance is legitimate arrangement of one's affairs so as not to pay or to minimise the payment of tax or duty. Avoidance should be distinguished from evasion. Avoidance involves planning so as to legitimately minimize liability to tax. To use the often quoted words of Lord Tomlin in *I.R.C v Duke of Westminister* (1936):
"Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax".

Example 5

If Uncle Ron wants to provide Ron Junior with a house (worth say, RM350,000) as a gift, he has two options :

First Option

Uncle Ron could buy that house in his own nam pay the ad valorem conveyance on sale duty; then tr the house to Ron Junior and pay ad valorem vol disposition duty on the voluntary conveyance t Junior.

[Under Section 16(1), any conveyance or tra operating as a voluntary disposition *inter vivos* (ex gift) shall be chargeable as if it were a conveya transfer on sale]. Therefore, the stamp duty paya

			R
sale duty	1 % x RM100,000	=	1,0
	2 % x RM250,000	=	5,0
			6,0
* gift* duty (same as above)		=	6,0
TOTAL		=	12,0

Second Option

Uncle Ron could avoid paying the second duty (volu disposition duty) by making Ron Junior, instea himself, the transferee in the conveyance from the ve of the house. He could save RM6,000 in stamp d

Example 6

A reconstruction of a company may involve a transf assets from one company to another within the s group. To avoid the stamp duty, the payment for asset transferred should be in the form of shares provided in Section 15). Any instrument made for purpose of or in connection with the transfer of undertaking in shares shall not be chargeable with d See item 5.6 below for a discussion on instrum executed in and out of Malaysia.

5. STRUCTURE OF THE STAMP ACT

The Stamp Act 1949 is divided into 10 parts and six sched Since the 10 parts comprise important aspects of the law the rules to be observed, each of them are elaborated be These parts include 83 sections which form the body of stamp duty legislation. The six schedules which appendices to the Act add some details of a general natur particular relevance to the main Sections. Each of the 10 p of the Stamp Act are elaborated below.

5.1 Part 1 - Preliminary

- *Collector of Stamp Duties*
  Section 3 appoints the Director General of Inla Revenue to be the Collector of Stamp Duties.

- *Power of The Collector*
  The Collector, or any officer appointed by him, sh

at all times have full and free access to all lands, buildings, places, books and documents for valuation and inspection purposes which the Collector considers necessary or relevant for the purpose of this Act. Any person who obstructs or hinders the Collector from carrying out his duties under the Stamp Act shall be liable to a fine not exceeding RM250 (Sec. 3A(5)).

Part II - Provisions Applicable to Instruments Generally

There are three headings dealing with different subjects described in this part, namely:

(a) "Liability of Instruments to Duty."

(b) "Payment of Duty" and

(c) "Valuation for Duty".

- *The Charging Section*

Section 4 of the Stamp Act 1949 is the charging section, that is, it raises a charge of stamp duty upon the several instruments specified in the First Schedule. This section gives authority for a duty to be assessed on a document.

The First Schedule - Instruments Chargeable with Duty

This schedule states the amount of duties to be paid on documents of particular types. Each number or "item" in the First Schedule is often referred to as a "head of charge" and division as a "sub head". The First Schedule ends with the list of "general exemptions" allowed by Section 35 which are not chargeable to duty.

- *Methods and ways of payment*

Section 5 sets out the requirement for every instrument which is chargeable with stamp duty to fully and truly set forth all the facts in the instrument. A breach of section 5 will mean liability to a fine not exceeding RM2,500.

Payment can be made by the following methods:
(a) Cash (if the duty does not exceed RM100),
(b) Revenue stamp (if the duty does not exceed RM500), or
(c) Money order, solicitors cheque or bank draft made payable to Collector of Stamp Duty.

Payment can be made by the following methods:
(a) Cash (if the duty does not exceed RM100), or
(b) Revenue stamp (if the duty does not exceed RM500), or
(c) Money order, solicitors cheque or bank draft made payable to Collector of Stamp Duty.

There are two ways of paying stamp duty.

(a) Adhesive Stamps

The duties with which instruments are chargeable shall be paid by means of an adhesive stamp of the appropriate value and such a stamp shall be a revenue stamp issued under this Act. The stamp shall be cancelled [as provided in section 7 (3)] by having words "Stamp Office" with the name of the district and the date written or printed partly on the stamp and partly on the paper to which the stamp is affixed. Any instrument bearing a stamp which has not been "cancelled" is deemed to be unstamped.

(b) Postal Franking Machine

The franking of any instrument by an authorized person shall have the same effect as cancelling an adhesive stamp with the date and the value indicated by such franking. The types of document in respect of which the franking facility may be used are listed in Schedule 5 of the Stamp Act 1949.

- *Valuation for Duty (Section 12 A)*

For the purpose of assessing the value of any property which is the subject of a transfer or a settlement, such value shall be taken to be :

(a) the money value mentioned in the instrument or
(b) the market value on the date of execution, whichever is the greater

In the case of *Chin Choy & Ors v. The Collector of Stamp Duties* [1988], it was held that the market value of a property is that on the date of the execution of the transfer and not the date of the sale and purchase agreement.

An appellate court would not interfere with a valuation of land by a judge for stamp duty purposes where the learned judge had not acted on any wrong principle of law nor misapprehended the facts nor made a wholly erroneous estimate of the value of the land. This principle was held in the case of *Collector of Stamp Duties v. Ng. Fah In & Ors* [1988].

5.3 Part III - Provisions Applicable to Particular Instrument

This part contains many sections which are important in terms of their daily usage. The subjects covered range from amalgamations of companies to voluntary conveyance *inter vivos*, to an agreement for sale chargeable and a list of other particular technical matters.

5.4 Part IV - Liability for Payment of Duty

Duty by Whom Payable (section 33)
The proper stamp duty is payable by:

(a) in the case of the instruments described in the first column of the Third Schedule, by the person mentioned in the second column of the Schedule;

(b) in the case of every other instrument, by the person drawing, making or executing such instrument.

5.5 Part V - Adjudication as to Stamps

This part contains five sections, that is Section 36 to 40, and the important sections are discussed below :

- *Adjudication Process (Section 36)*
  A person may ask a Collector for his opinion of the stamp duty payable for a fee of RM10. The Collector will assess the duty chargeable on the instrument. Under Section 37, the Collector will determine and certify by endorsement that the instrument is fully stamped (or is not chargeable with duty). Any instrument upon which an endorsement has been made shall be deemed to be fully stamped (or not chargeable with duty), the instrument which is chargeable with duty shall be receivable in evidence or registered as if it had been originally stamped.

- *Appeal (Section 39)*
  Any person who is dissatisfied with the assessment of the Collector may appeal, within 21 days after the date of assessment, against the assessment to the High Court and the Court shall assess the duty, if any, with which the document is chargeable. The payment of the duty, however, has to be made irrespective of the appeal.

5.6 Part VI - The Time of Stamping Instruments

This part contains 10 sections , that is, Section 41 to 50, and they relate to the period of time within which the instrument should be stamped and the penalties to be paid if the document is late for stamping.

- *Instruments Executed in Malaysia*
  Section 41 provides that all intruments chargeable with duty and executed by any person in Malaysia shall be stamped before or at the time of execution. However, Section 47, which is observed in practice, allows stamping after execution (except for bills of exchange, cheques or promissory notes or receipts for money or property value which exceed RM20). Execution date is the date when the instrument is signed (as defined in Section 2).

- *Instruments Executed outside Malaysia*
  Section 42 provides that every instrument chargeable with duty executed outside Malaysia (except bill of exchange, cheque or promissory note) may be stamped within 30 days after it is first received Malaysia. If the chargeable instrument is brought into Malaysia, the question of paying sta duty does not arise.

  Execution of documents outside Malaysia may interpreted as avoidance of tax. Legitim avoidance of tax, however, is not an offence un the law. Financial institutions in Malaysia m sometimes allow certain customers, usually favoured and reliable ones, who have taken sh term borrowing, to execute loan documentations of Malaysia.

  A loan facility from a bank is usually secured b loan agreement and common secur documentation include :
  (i) a guarantee by an individual or corporation
  (ii) a fixed charge on the debenture of a corporat or borrower;
  (iii) an assignment of the contractual rights of borrower with regard to the land which without a title; and
  (iv) a charge on the shares owned by the borro by way of a memorandum of deposit of sto and shares.

  All the above documents (ii) to (iv), except (i), wo attract *ad valorem* stamp duty if there is no l agreement or if the loan agreement is not treated the principal instrument.

- *Penalty for Late Stamping*
  Generally, an instrument should be stamped wit 30 days from the date it is executed within Malays If it is stamped after the period stipulated, a pena will be imposed (Sec. 47). The amount of penalt RM25 or four times the duty chargeable, whiche is higher (Sec. 47A).

5.7 Part VII - Instruments not Duly Stamped

Any instrument chargeable with duty which is not d stamped is inadmissible in evidence and cannot registered for any purpose (section 52). For example bank cannot produce a document, which is not d stamped, in court as evidence of the borrowe indebtedness or to enforce the security against borrower or charger nor can the document be registe by any public authority.

A document is not duly stamped where :
(a) stamp duty is not paid at all;
(b) the stamps are insufficient; or
(c) the stamps are of the correct amount but inadvertence or accident, the stamps have not be properly cancelled.

In the case of *Vernon Allen V. Meers Pallay & Ors* (1877

was held that a document bearing the correct amount of stamps but not duly cancelled as required under the Stamp Ordinance could be corrected by proper cancelling and become admissible in evidence.

Part VIII - Allowance for Spoiled Stamps

- *Spoiled Stamps*
  The Collector of Stamps Duties can provide an allowance for spoiled stamps in certain cases (Section 57). Such an allowance can be made for adhesive stamps that are unfit for use or the stamp on the instrument has not been made use in a proper manner. In cases where the stamp has been spoiled, an application for relief or claim can be made within twelve months after the stamp becomes useless or, in the case of executed instrument, twelve months after the date of the execution.

- *Extra Payment of Stamps*
  If a person has paid a stamp duty on a document which, for example, turns out to be exempt, he can make a claim for stamp allowance (repayment) as provided in Section 58 of the Act. The claim must be made within twelve months after the execution date.

- *Payment in lieu*
  In any case in which allowance is made for spoiled, unused or misused stamps, the Collector shall give in lieu the same value in money to the claimant (Section 59).

Part IX - Offences and Penalties

Sections 60 to 75 in this part deals with various fines for offences related to stamp duty. A person or company will be fined a sum of money if cheating was discovered. The fine is a punishment imposed by the court. By comparison, a penalty is the sum a taxpayer has to pay, in addition to the duty, for not stamping his document at the proper time.

Most of the sections in this part are related to the action of evading the payment of duty which is liable to a fine.

Part X - Miscellaneous Items

The final part comprises of several miscellaneous items. One of the items stated in Section 76 stipulate that the books, records and documents in the custody of public officers may be inspected without a fee. One other important section (Section 80) provides the power to the Minister of Finance to exempt, reduce or remit duties.

CONCLUDING REMARKS

Stamp duty is a very important aspect in every business transaction that involves instruments. The duty chargeable on an instrument must be paid promptly in order to avoid inconveniences arising from the "not duly stamped" instrument. For example, it is very disadvantageous to possess an instrument which would not be generally acceptable as evidence in court should there be a dispute over it.

The Stamp Act has set out the amount of stamp duty to be paid and by whom it is payable. There are ways in which a taxpayer can legally reduce his liability to stamp duty. It usually involves planning, which is legal and acceptable, in order to avoid or minimize the payment of duty. Normally, tax planning requires that a tax-saving opportunity be recognised prior to the occurrence of the transaction. Although it is sometimes possible to take advantage of previously overlooked tax saving opportunity, the common result of an overlooked opportunity is a lost opportunity, since the Stamp Duty Office usually deems the original action the final performance for stamp duty purposes. Consequently, it is important for a taxpayer to plan every transaction made in order to minimise payment of stamp duty. Finally, it should also be noted that stamp duty comprises a sizeable proportion (8.92 percent) of the total income collections. This proportion has steadily increased over the years up to 1997. With the current economic slowdown resulting in a sizeable drop in business and property transactions, the yield from stamp duty for 1998 is expected to fall drastically.

FOOTNOTES

1. The words 'instrument' and 'document' are used interchangeably. According to Section 2 of the Stamp Act 1949, "instrument includes every written document.
2. Section 52(1) of the Stamp Act 1949 prohibits registration, acceptance or authentication of any instrument which has not been duly stamped.
3. Income tax comprises of corporate tax (RM16.7 bil.), individual tax (RM6.5 bil.), petroleum tax (RM3.9 bil.) and from cooperatives (RM1 bil.).
4. "Conveyance on sale" includes every instrument and every order by Court, whereby any property, or any estate in any property, upon the sale thereof is transferred to or vested in a purchaser or any person on his behalf or by his direction.
5. "Property" includes movable or immovable property and estate or interest in any property movable or immovable property and any other right or interest in the nature of property which is capable of being disposed of and has a value in it.

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4. Eastern National Omnibus Co. v. IRC (1939) IK.B. 161
5. I.R.C v Duke of Westminister (1936) A.C. 1; 19 T.C. 490
6. Lim Teck Lee v The Commissioner of Stamp Duties (1956), MLJ 135
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AOTCA OPEN FORUM

ASIAN ECONOMIC CRISIS
OUR COUNTRY'S FISCAL AND ECONOMIC RESPONSE - JAPAN

Shoji Uematsu
Director of International Committee
Japan Federation of Certified Public Tax Accountants' Associations

(US$1=¥120)

I Present Business Conditions in Japan

- Japan's economic stagnation
  [Appendix 1]
  Revised Estimates of Economic Outlook for FY 1998
  (October 6, 1998, by the Economic Planning Agency)

- its major causes

  1) Increase in consumption tax rate to 5%, social insurance premium, etc.
  2) Loss of reliability on Japanese financial system and influence of a credit crunch
  3) Asian economic crises

II Measures to Stabilise the Financial System

Enactment of the Bank Recapitalisation Law

(Gist of the law)

- Injection of up to ¥25 trillion in public funds
- Introduction of the special public administration system (temporary nationalisation) and establishment of the 'Bridge Bank" system (Y18 trillion to be provided)
- Introduction of a simpler auctionary system for the purchase of bad loans
- Foundation of an institution modelled the US Resolution Trust Corporation
- Foundation of a highly independent financial resuscitation committee
- Increase in public funds from ¥30 trillion to ¥60 trillion

III A Measure to Ease Credit to Small and Medium-s Enterprises

The Japanese government has been providing a sp reserve of ¥20 trillion through the credit guara system.

IV Tax Reforms

Major points to be focused on for FY 1999 Tax Refo

1) Individual income tax cuts
   - To reduce the maximum individual incom rate from 65% (including income and inhabi taxes) to 50%
   - To exempt the interest oh housing loans from t

2) Corporate tax cuts
   To lower the effective corporate tax rate (about including national and local taxes) to about 40

V Financial Aid to Asian Countries

(Appendix 2)

A New Initiative to Overcome the Asian Currency C
- New Miyazawa Initiative -

VI Future Plans

(Appendix 3)

Recommendations for short-term Economic Policies
The Economic Strategy Council of Japan
October 14, 1998

An overview of the influence of the recent Asian economic crisis on Japan's economy and of the nation's economic plans.

II. Present Business Conditions in Japan

Japan's most fundamental role in the economic recovery of Asia is to stimulate domestic demand as quickly as possible.

Up to the present, however the nation's economy remains in stagnation. In early October the government revised its real-economic-growth projection of 1.9% for fiscal 1998 considerably downward to minus 1.8%. Following the projection of minus 0.7% for fiscal 1997, this maths the second straight year of contraction for the first time in the post-war period.

According to the enterprises bankruptcy statistics for the first half (April to September) of 1998 collected by a private credit investigation bureau, the debt total amounts to 7,936.5 billion yen, a 33.8% increase from the same period of 1997. Bankruptcies total to 10034, a 26.9% increase from the first half of the previous year. These figures exceed all previous records for the first half. Recession and the credit crunch of banks are said to be the causes. In particular more and more small enterprises have been going bust due to a credit crunch.

I attribute Japan's stagnation to the following three causes.

First, the economic burden on the people increased in fiscal 1997 by about 9 trillion yen over the previous year due to the consumption tax rise in April 1997 from 3% to 5%, a raise in social insurance premiums, and the termination of special tax reductions. Besides, consumers had sent much money while the consumption tax had been 3% and have been restraining from consumption since the tax rise.

Second, financial institutions' bankruptcies caused by the collapse of bubble economy as well as the bad debt problem have damaged reliability of Japan's financial system. The influence of a credit crunch should also be noted. To prepare for a Japanese 'Big Band, financial institutions are trying to improve their assets structure and rentability As a result they are reluctant more than ever to lend money. Such attitude of financial institutions makes it difficult for companies to raise fund, discourages them from investing and even drives them to bankruptcy.

The third cause of Japan's recession is the Asian crisis. Monetary and economic chaos in the region has raised fear about the future among Japanese companies and people, and had ill effects on the soundness of Japanese financial institutions.

II. Measures to Stabilise the Financial System

On October 12, the Diet managed to enact financial reform laws providing measures to liquidate failed financial institutions, after political confusion around the matter; Then on October 16 the bank recapitalisation law was enacted with a view to preventing the failure of financial institutions.

These laws provide a framework in which public funds are injected into healthy banks to keep them from bankruptcy, while the government takes care of failing banks and protects their depositors. Thus Japan has achieved an ugrent task of establishing a fnancial crisis management system, which wee anticipated by other countries.

The main points of the framework are as follows.

- To prevent bank failures, up to 25 trillion yen in public funds shall be injected into banks through the government purchase of their preferred stocks, etc, provided they meet a certain level of financial soundness.
- As measures to liquidate failed banks, the special public administration (temporary nationalisation) system and the "bridge bank" system shall be established. 18 trillion yen in total shall be provided for that.
- For smooth processing of bad loans, private factoring companies shall be permitted to undertake the purchase of bad loans. A simpler auctionary system shall be introduced.
- An institution modelled on the United States Resolution Trust Corporation shah be founded to manage the debt collecting process.
- A financial resuscitation committee, an institution highly independent of the Finance Ministry shah be founded to deal with failed banks and to restore financial health of failing banks, taking over the management and inspection responsibilities of the Financial Supervisory Agency.
- The total amount of available public funds shall be increased from the existing 30 trillion to 60 trillion yen. It includes 18 trillion yen for dealing with bank failures and 25 trillion to improve banks' financial health, as listed above, and 17 trillion for protecting depositors of failed financial institutions.

A poll conducted by the Nihon Keizai Shimbun, one of Japan's leading newspapers, indicates that 9.6% of the respondents "approve" the injection of public money and 47.1% think it "inevitable", That means 56.7% accept the injection.

III. A Measure to Ease Credit to Small and Medium-sized Enterprises

Since October 1, the government has been providing a special reserve of 20 trillion yen through the credit guarantee system controlled by credit guarantee associations. Upon easy conditions, the reserve is lent to small and medium-sized enterprises running short of money due to a credit crunch or the failure of their banks.

The Ministry of International Trade and Industry says that by October 23, 90869 applications for the reserve were made for a total of 2684.4 billion yen. Of these applications, 44114 cases worth 1282.4 billion yen were approved These amazing figures show how small companies have been suffering with a severe credit crunch. The special reserve is expected to greatly decrease the bankruptcy of small enterprises in the second half of 1998.

IV. Tax Reforms

In individual income taxes for fiscal 1998, in addition to the initial tax cute worth 2 trillion yen, another 2 trillion-yen tax reduction was implemented in August. However, they do not seem to have stimulated the economy enough, probably because people did not spend all of the tax cute in fear of a grim future of the nation's economy.

The government will discuss about tax reforms for fiscal 1999 and subsequent years, presumably focusing on the following measures.

1 Individual income tax cuts
- To reduce the maximum individual income tax rate, which is now 65% including income and inhabitants taxes, to 50%, and to revise the existing progressive tax structure to narrow differences between classes.
- To exempt the interest on housing loans from tax.

2 Corporate tax cute
- To lower the effective corporate tax rate, which is now a little more than 46% including national and local taxes, to the internationally competitive level of around 40%.

V. Financial Aid to Asian Countries

On October 3, Finance Minister Kiichi Miyazawa presented the 'new Miyazawa plan' at the ASEAN meeting held in Washington to give a 30 billion financial aid to Asian countries.

The aid program provides 15 billion yen for medium and long-term support, while the remainder is to be used for short-term supports. Long-term programs require the Export-import Bank of Japan to guarantee the debts Asian governments, and call for the establishment fund to pay the interest on their loans. Short-te supports are to be implemented when necessary to ena a smooth trade finance of Asian countries a that they proceed with their economic reforms.

VI. Future Plans

The Strategic Economic Council, an advisory pane Prime Minister Keizo Obuchi, compiled emergency sh term economic policy recommendations on October The panel members are worried that if the nation lea its fragile financial system and a sign of deflation as t are, they might result in a world crisis. The key points the recommendations are as follows.

1 The government should inject tens of trillions of y in public money into viable banks. (Note t difference from the bank recapitalisation law. Wh the law requires banks' requests in order to inj funds into them, the presented measure allows t government to virtually force banks to rece funds.)

2 Additional fiscal measures worth more than trillion yen should be taken, including the maximu possible amount of fresh spending.

3 The government should implement permane reductions of income and corporate taxes worth more than 6 trillion yen initially pledged by the Pri Minister.

4 The interest on housing loans should be exempt from income.

5 The government should abolish the tradition budgetary framework of public works and devel new types of public works which respond to t needs of the 21st century focusing on five are urban facilities, information, education, welfare, a environment.

6 A planned raise in social insurance premiums shou he suspended for the time being.

7. A two year exemption of the real proper acquisition tax, registration and license taxes and t stamp tax is required.

8 A grace of housing loan payment for a certain peri should be given to the unemployed.

9 The government should issue a medium and lon term projection of its revenues and expenditur within several months.

Responding to the above recommendations, t government expects to design emergency econom measures within November Yet it would be too early be optimistic about the future of Japan's economy.

APPENDIX 1

tober 6, 1998
nomic Planning Agency

REVISED ESTIMATES OF ECONOMIC OUTLOOK FOR FY 1998

			FY 1997 (Actual)	FY 1998 Initial outlook	Revised estimates
1	**Gross Domestic Products**			(about)	(about)
	GDP (at current prices trillion yen)		504.6	519.7	495.4
	Growth rate of GDP (%)	at 1990 prices	**-0.7**	**1.9**	**-1.8**
		at current prices	0.3	2.4	-1.8
	(of which, %)				
	Private consumption	at 1990 prices	**-1.1**	**2.5**	**-0.9**
		at current prices	0.9	3.3	-0.8
	Private residential investment	at 1990 prices	**-21.1**	**4.9**	**-11.6**
		at current prices	-19.7	5.7	-12.4
	Private non-residential investment	at 1990 prices	0.7	**3.5**	**-10.1**
		at current prices	0.4	3.0	-11.3
2.	**Labor & Employment**			(about)	(about)
	Total labour force (ten thousands)		6,794	6,830	6,785
	Employed labour force (ten thousands)		6,557	6,605	6,500
3.	**Industrial production**			(about)	(about)
	(Percentage changes from the previous fiscal year, %)		1.2	1.8	-7.3
4.	**Prices**				
	(Percentage changes from the previous fiscal year, %)				
	Domestic wholesale price index		1.0	-0.8	-1.7
	Consumer price index		2.0	0.7	0.1
5.	**Balance of payments**			(about)	(about)
	Current balance		12.9	12.4	16.6

Major assumptions for estimation)

- No major financial institutions fail.
- There is no turmoil in the global financial and currency markets.

APPEND

A New initiative to Overcome the Asian Currency Crisis
- New Miyazawa Initiative -

To assist Asian countries in overcoming their economic difficulties and to contribute to the stability of international financial markets, Japan stands ready to provide a package of support measures totalling US$30 billion, of which US$15 billion will be made available for the medium- to long-term financial needs for economic recovery in Asian countries, and another US$15 billion will be set aside for their possible short-term capital needs during the process of implementing economic reform.

I. MEDIUM- TO LONG-TERM FINANCIAL SUPPORT TO ASIAN COUNTRIES

1. Need for funds in Asian countries

Asian countries affected by the currency crisis need medium- to long-term capital to implement the various policy measures described below for economic recovery.

(1) Supporting corporate debt restructuring in the private sector and efforts to make financial systems sound and stable

(2) Strengthening the social safety net

(3) Stimulating the economy (implementation of public undertakings to increase employment)

(4) Addressing the credit crunch (facilitation of trade finance and assistance to small- and medium-sized enterprises)

2. Measures for financial assistance

To meet these medium- to long-term capital needs of Asian countries, Japan will extend financial assistance to those countries making use of the various measures listed below. In doing so, due consideration will be paid to the better use of the Tokyo market to mobilise Japanese funds.

(1) Providing direct official financial assistance

i) Extending Export-Import Bank of Japan (JEXIM) loans to Asian countries

ii) Acquisition of sovereign bonds issued by Asian countries by the JEXIM

iii) Extending ODA yen Loan to Asian countries

(2) Supporting Asian countries in raising fu from international financial markets.

i) Use of guarantee mechanisms

a) Utilising the guarantee functions o JEXIM

- The JEXIM will guarantee bank l to Asian countries.

- The JEXIM will guarantee sover bonds issued by Asian countries (a amendment is necessary).

b) Providing export insurance to bank lo to Asian countries

c) Requesting the World Bank and the A Development Bank to step up their ef to provide guarantees to bank loans bond issuance by Asian countries

d) It is hoped that in the long run establishment of an internatio guarantee institution with a prime fo on Asian countries will be seriou considered.

ii) Interest subsidies

Japan will establish an Asian currency cr support facility backed by our funding. Th facility will be used to provide interest subsid to Asian countries that borrow funds fr JEXIM or private banks in conjunction wi loans from the Asian Development Bank.

This will be an open facility in which countries are welcome to take part.

(3) Financial support in the form of co-financing wi multilateral development banks

Japan will continue to provide co-financing with t World Bank and the Asian Development Bank Asian countries. In particular, we will call t maximum financial assistance from the World Ba and the Asian Development Bank to support th Asian countries that are faced with huge cap

needs in an effort to address the issue of corporate debt restructuring and the restoration of stability in the financial system. We are ready to provide co-finance with these two banks.

(4) Technical assistance

The World Bank and the Asian Development Bank will be requested to provide necessary technical assistance through Japan special funds to Asian countries that are to implement a comprehensive approach to address the issue of corporate debt restructuring and the restoration of the financial system. Japan is prepared to contribute by means of providing technical assistance to these Asian countries, taking into account the respective situations in those countries.

II. SHORT-TERM FINANCIAL SUPPORT TO ASIAN COUNTRIES

Asian countries may face some needs for short-term capital in the course of making progress in their economic reform. To be prepared to meet these needs such a facilitation of trade finance, Japan will set aside US15 billion in short-term funds which will take the form of swap arrangements.

Japan intends to cooperate closely with the multilateral development banks and the related countries, especially Asia-Pacific countries and G-7 countries, in implementing the new initiative.

APPENDIX 3

Recommendations for Short-term Economic Policies
The Economic Strategy Council of Japan
October 14,1998

The sixth meeting of this council has unanimously adopted these recommendations, and submitted them to Prime Minister Obuchi

SUMMARY

1 **Assessment of the Japanese Economy**

The Japanese economy has been in a most severe situation. It could be thought that the economy now faces the entrance of a vicious circle in which the worsening of the real economy, represented by a large decline in private demand, leads to the malfunctioning of the financial system, which then feeds back to the real economy adversely. The projection of economic growth rate for this fiscal year is forced to be revised down to almost minus 2 percent over the previous year It would be difficult to exclude the possibility of negative growth, to a significant extent in fiscal year 1999.

With this critical assessment in mind, the Economic Strategy Council herewith makes some urgent recommendations in order to avoid the fear of a global depression triggered by Japan and to revive the Japanese economy.

2 **Outlines of the Recommendation**

(1) Speedy Stabilisation of the Financial System

It is inevitable to inject as one emergency measure to stabilise the financial system as quickly as possible, public money in large quantities with a view to overcoming the historical economic downturn and to preventing a world financial crisis from breaking out.

(2) Short-term Economic Policies

(a) Perspective for Designing the Current Measures

Additional boosting measures accompanying fiscal stimulus on a large scale are required. in addition to the financial stabilisation measures, in order to escape from the vicious circle of deflation and to rejuvenate the Japanese economy. Stabilisation measures of the financial system and economic stimulating packages are tandem for economic recovery.

(b) Consistency with the Necessary Structural Reform in the Long Run

It should be noted that the economic measures, though aiming at short-term effects, must be consistent with the necessary structural reforms in the long run. Therefore, the short-term economic policies should be designed and implemented as to front-load the long-term structural reform.

(3) The Medium- and Long-term Projection of the Government Fiscal Balance

While it is admitted that the intended short-term economic policies will result in large government deficits, it does not mean that the long-term structure of government balance can be ignored. The plan clarifying the way for the sound fiscal structure in the long run ought to be drafted, which consequently may help boost the confidence of the Japanese economy.

RECOMMENDATIONS

1 The Speedy Stabilisation of the Financial System

The BIS risk-asset ratio has been declining sharply because of the rapid rise of non-performing assets from economic stagnancy under ongoing deflation and the increase of capital losses from plummeting share prices.

If things were left as they are, banking behaviour of slashing loans and calling in old loans would be accelerated. All this might result in not only deepening deflation but also opening the way for a financial crisis led by the global financial market.

To stop this momentum, the following temporary measure, which is valid for up to three years, is needed immediately. The capital adequacy ratio must be dramatically augmented as soon as possible by injecting public money into banks that are judged to be viable, amounting to several dozen trillion yen in a bold and prompt manner under the positive role played by the government.

It is due without question to make clear the responsibility of bank managers, whose banks are obliged to accept an injection of public money according to the results of the audits of the Financial Supervisory Agency. However, considering the emerging situation, two issues should be taken up separately; the responsibility of bank managers, and the capital injection of taxpayers' money. Furthermore when a bank receives public money, it must draft and implement immediately a voluntary restructuring plan. If it fails to improve its banking business within three years, the relevant responsibility needs to be clarified.

2 Short-term Economic Policies

The following short-term measures, which are consiste with the necessary structural reform of the Japane economy in the long run, and that are at the same ti expected to be effective in stimulating the economy, a to be carried out without hesitation. The current econo growth rate, which is estimated at around minus 1 percent at annual rates, should be raised to a levelling o by the earliest possible quarter. For this purpose, it necessary to mobilise additional fiscal measures, whi amount to well over ten trillion yen by budgeting the tr fiscal expenditures, the so-called the real water, as muc as possible.

(1) Expanding Income Tax Cuts for Households an Corporate Business

The sustained income tax cuts for households an corporate business, which were already official announced to be more than 6 trillion yen, are to b further expanded.

> Long-term Perspective 1. For Realisation of Small Government
>
> Drastic administrative reform both in the central and local governments is to be pursued. This will contribute to financing in part the expected income tax reduction. The goal is to build a creative and regulation-free society led by private initiatives, away from the one over-regulated by the government and based on self-responsibility through enhancing administrative devolution, reviewing fundamentally the Fiscal Investment and Loan Program, and streamline and privatising government corporations.

> Long-term Perspective 2. Toward Flattening the Progressive Structure of Tax Brackets
> The tax system centered on the direct tax, with its steep progressive structure, hinders the initiative of people. Furthermore it does not fit in the forthcoming aged society, especially with number of births shrinking. For these reasons, reforms such as cuts in personal income tax, personal residence tax. and inheritance tax, easing of the progressive structure of tax brackets, and in the long run shifting the tax burden from direct to indirect taxation, and redressing some tax privileges (for example, reviewing taxation on certain activities of non-profit organisation) are unavoidable.

(2) Introduction of Interest Payment Deduction from the Income Tax Base Related Housing Loans

As for the introduction of interest payment deduction from the taxable income of those who have housing loans, no conditions are to be required for the number of floor areas and for an upper limit on income of an applicant. Furthermore, this deduction is to be allowed to land acquisition and to people who own a second home in addition to their first residence. The tax deduction privilege associated with the amount of loan outstanding which is currently in place, will remain for a while. So that applicants of owner housing are free to choose either of two types of privileges. In addition, rent payments of rental housing residents are to be given some benefits, concrete measures of which will be studied. The Economic Strategy Council unanimously supported the view that expansion of housing investment has a significant effect on stimulating private consumption.

Long-term Perspective: For Realising Housing of High Quality with Various Choices

Base on the Strategic Plan for Doubling Space for Life, a housing-rich society will be realised which warrants satisfaction in housing of high quality and of a wide variety of choices.

(3) Promotion of Public Works Designed for the 21st Century

While the conventional practice of allocating budgets for public works needs to be eliminated, a process that tends to be fixed by governmental ministries and agencies, and by type of projects, new type of public works should be promoted. They should be concentrated on such areas as urban development information infrastructure, education and human resource development welfare infrastructure, and environment all of which are essential to Japanese society in the 21st century. In doing 50, establishing the following three basic rules is necessary. Rule 1. Efficiency, Rule 2: Transparency, Rule 3. Assessment

Long-term Perspective: Investment into Five Stressed Areas Such as Urban Development Information Infrastructure, Education and Human Resource Development Welfare Infrastructure, and Environment

The five areas above are essential to Japanese society in the 21st century. It is essential to eliminate administrative turf and establish a system that allows a consolidated strategic plan. It is also important that shares of public works obtained by past practice should be corrected and that deregulation and preferred tax measures should be implemented to enhance investments into those five areas.

(4) Measures for Unemployment and Flexible Job Placement

Measures to support vocational training and technical skill acquisition for unemployed people, as well as those to assist the creation of new businesses should be extended. Investment toward self-education, including buying information-related hardware by using expenses necessary for self-training, should be exempted from taxable income. In addition, deregulation to facilitate job change should be further enhanced. Defined contribution pension plan should be implemented as early as possible, not to impede flexible job change. The industrial Revitalisation Plan should be promoted to develop new industry and to create new employment opportunities.

Perspective: Establishing Business Infrastructure to Foster Further Competition An internationally competitive system should be established by reviewing legal and economic regulations that hamper competition. A labour force should be made more flexible and optimal human resource allocation should be realised, thus introducing measures to fully support new business. In doing so, a shift from indirect to direct financing is to be realised by vitalising capital markets.

(5) Freezing a Hike in the Social Security Contributions

KOREA'S FINANCIAL AND ECONOMIC RESPONSE TOWARDS ASIAN ECONOMIC CRISIS

By
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The presentation on this paper is in three parts. The first part is on the overall economic situation of crisis-hit Asian countries, second is on view points of Korea economic futures, and last is Korean response, policies and reforms to overcome the economic hardship.

1. ASIAN FINANCIAL CRISIS

The Asian financial crisis has become so serious that it threatens to unravel decades of economic gains by ten of million of people in the region.

The bank, in a report on Asia's economic crisis, painted a grim picture of the recessions now plaguing countries from South Korea to Solomon Islands. Between 1975 and 1995, dramatic economic development lifted some 370 million people out of poverty. Today's crisis could push many of them back across the line.

Compounding the region's woes is a sharp decline in foreign-capital flows, as investors flee risky emerging markets in favour of safe financial harbours. A month earlier, the Institute of International Finance, a Washington risk-analysis group, released its estimates of private and official capital flows to 29 emerging markets. Net private flows will drop about 35% to an estimated $158.2 billion this year from $241.7 billion last year.

Investors are the most skeptical of emerging Asia. The five hardest-hit Asian countries such as South Korea, Malaysia, the Philippines, Indonesia and Thailand have seen a net outflow of private funds from portfolio investors, banks and non-bank financial institutions.

Some Bank economists estimate that if Asian countries address the weaknesses in their banking system and adopt other critical reforms, an additional $10 billion in external financing aimed at fiscal stimulus would provide a "strong impetus to growth". Since the crisis began in July 1997, the bank has pledged $18 billion in loans for East Asian countries.

The bank projected that Thailand, South Korea, Indonesia and Malaysia will suffer contractions this year, with China, Taiwan and Vietnam avoiding recession. There are nascent signs of financial stability in South Korea, Malaysia, the Philippines, and Thailand, but t recessions continue to impose enormous human co across the region.

2. VIEW POINTS OF KOREA ECONOMIC FUTURE

November 1998 marks one year since the economic cri that started in Thailand and made its way to our coun In recent weeks, a number of articles and reports overs have commented on Korea's efforts to reform and future prospects. What has emerged in recent weeks i clear split between the optimists and the pessimists. Ea side in marshaling a significant amount of evidence support its claims.

Optimists point to banking reform as solid evidence th Korea has made progress in dealing with one of its bigg problems.

The government has forced six of the biggest and mo troubled banks to make deep cut in staff and branches they can be recapitalised.

A number of statistics support the claims of the optimis that the economy has stabilised. Foreign reserves ha climbed from a few billion dollars in December last ye to $44 billion this year. Likewise, short-term call inter rates, which soared to 25% late last year, are now dow to 7% well below where they were before the crisis h Unemployment is still growing, but at a slower rate tha earlier in the year. Inflation has stabilised and the curre account remains strongly in the black. The won has trad within a fairly narrow range of 1300-1400 to the dol since early this year.

In response, the pessimists point to the slow pace restructuring the biggest cheabols (means lar conglomerate) to reduce debt, staff, and excess capaci Pessimists also point to the mountain of debt and ba loans that threaten the financial system.

Events of the last month, however, show the psycholo may be shifting in favour of the optimists. The Japane Diet finally approved a bill that starts cleaning u Japanese banks. Most economists expect another cou years of recession, but the chances of a financial collap

have now been reduced. The cut in U.S. interest rate last month stimulated Asian markets and showed the world that the U.S. is taking steps to keep its economy from falling into recession.

In relying upon the forecast, made by Korea Development Institute (KDI), I dare to choose optimistic side rather than pessimists. KDI predicted that the Korean economy, as measured by its gross domestic product will grow 2% next year "if restructuring succeeds and the Japanese yen remains strong."

"Our recovery depends on the global economy, the yen-dollar exchange rate and the pace of restructuring. Growth will range from 0 to 2%," said Mr. Shim, senior research fellow at KDI.

However, the 2% growth forecast appears to be more hope than a forecast. It may be intended to ease public concern," said Mr. Chae, a research fellow of Hyundai Research Institute.

OUR RESPONSE, POLICIES AND REFORMS

The government of Korea has initiated profound and far-reaching changes. These changes are intended to boldly transform the country, economically and socially, and will build a solid foundation that will ensure sustained growth over the next century and beyond.

The government analysts have assured that nation's economy will bottom out from first part of next year if following reforms are accomplished without fail.

A. Financial sector reforms

Following the financial crisis of last year and the subsequent IMF intervention, Korea has undertaken swift and decisive reform measures. Top priority has been placed on restoring stability as well as enhancing the soundness and efficiency of the financial system. Fundamental changes are being made, with reforms respecting the following principles:

1) The financial systems must be normalised as quickly as possible through swift and extensive reforms.

2) Restructuring costs must be met primarily by financial institutions; fiscal support will be linked to their restructuring or recapitalisation plans in order to minimise the taxpayers' burden and eliminate the moral hazard problem.

3) Structural reforms will be made in accordance with market principles and international standards and practices.

4) In dealing with financially nonviable institutions, transparent burden-sharing rules will be established and strictly applied.

Restructuring of the 25 largest commercial banks is well under way. Five of them have been closed. Leading international financial institutions, like the IFC and Commerz Bank, have recently made equity investments of $400 million. Also, a number of mergers are in the works.

B. Corporate sector reforms

At the heart of Korea's corporate sector reform programme is the restructuring of the conglomerate, which have been the engine of economic development for the past three and a half decades. There are five objectives:

1) enhanced transparency in management
2) phase-out of cross-debt guarantees among affiliates
3) substantial capital structure improvement
4) increased focus on globally competitive core businesses
5) increased accountability of controlling owners

To achieve these objectives, co-operation between the corporate sector and financial institutions is being encouraged, and government intervention is being kept to a minimum. Already, substantial progress has been made in reforming the corporate sector. For instance, combined financial statements of the top thirty chaebols will be required as per international standard from 1999.

Concurrently, chaebols, starting with the top five (see foot note on last page), are being encouraged to make business portfolio adjustments and consolidations through a self-managed business swap programme. Through this programme, it is expected that excess production capacities will be eliminated and that manpower will be used more efficiently. This, in turn, will allow the leading chaebols to concentrate on their core business areas.

C. Labour market reforms

The goal of the on going labour market reform is to secure flexibility in the labour market while also minimising the impact of rising unemployment. To achieve this, priority has been put on the establishment of market mechanisms. A series of reform measures undertaken since early 1998 now allows redundancy layoffs and manpower leasing to allow better labour cost management. For instance, the Labour Standards Act, revised in February 1998, allows companies to dismiss employees in the event of urgent management need such as business

transfers, mergers, or acquisition caused by extreme financial difficulty.

In order to minimise social disturbances created by increasing unemployment, the government is adopting a series of relief measures. About $7.3 billion is being allocated to various types of social programmes and subsidies in 1998.

D. Fiscal and public sector reforms

Fiscal and public sector reform is the most important aspect of Korea's socio-economic reform. Spearheading public sector reform efforts is a special body, the Planning and Budget Commission (PBC). Under the PBC's auspices, a number of wide-ranging reform programmes are being implemented.

Budget reform: The goal is to improve fiscal efficiency and to enhance transparency and accountability. Budget structure is being changed to cut nondiscretionary expenditure and to improve efficiency in agriculture, education and infrastructure.

Government downsizing: Restructuring of the central government include a 10% reduction in the number of government workers and consolidation of five ministries and has decreased the total number of ministries from 22 to 17. Since the second half of this year, the focus of the government has been on streamlining local government.

Tax reforms: The Korean tax system is being streamlined in order to bring transparency in line with accepted international standards. The number of tax items will be reduced by consolidating some of the earmarked surtaxes. Income tax will be reduced. The tax administration will be completely overhauled by the year 2000 for greater efficiency and transparency.

Privatisation of public corporations: Eleven of 26 public corporations and 61 of their subsidia will be privatised. The public corporations t privatised include the "Big Six" (see foot note). T programme will generate $6 to $8 billion by which will be used for financial sector restructu and the financing of various social programmes the unemployed. This privatisation proces expected to be completed by the year 2002.

CONCLUSION

In conclusion, I would like to mention that Asian econo crisis will be cured sooner or later. However, it mostly depe upon stabilising the financial markets. Political and finan leaders of all countries are now focused on this stabilisati

Last year the Asian crisis was about "crony capitalism" a feckless governments; today it has become a world econo crisis that sits at the center of all policy debates. Logically, a new currency crisis to hit Korea under such psychologi conditions, the Korean economy would have to significantly more flawed than most other emerg economies. The slow but steady path to stability this ye combined with number of solid fundamentals, shows t the worst is over for the Korean economy. The real crisis we are to have, is to return the Korean economy to prosper

FOOT NOTE

Top Five:
Hyundai, Samsung, Daewoo, L.G. (Lucky Gold) and S (Sernkyong) Group

"Big Six":
Korean Telecom Corp., Pohang Iron and Steel Co., Ko Electric Power Corp., Korea Gas Corp., Korea Hea Industries and Construction Corp. And Korea Tobacco a Ginseng Corp.

TAIWAN'S FISCAL POLICY: ITS ROLE IN THE ASIAN FINANCIAL TURMOIL

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THE ELEMENTS OF TAIWAN'S RESILIENCE

Taiwan has won world-wide acclaim for its strong resilience to the Asian financial turmoil. The major factors behind its success are many. They include a sound economic base, well-supervised financial sector, high savings rate, the ability of small and medium-size enterprises to cope with changing conditions, and the government's successful fiscal and financial policies.

1. Stable Economic Growth and Industrial Upgrading

Despite of the financial storm, Taiwan managed to attain an economic growth rate of 6.72 percent in 1997. It has maintained annual growth rate of at least 6 percent during the past ten years, except 1990 and 1996, when the figure slipped slightly to 5.39 percent and 5.67 percent, respectively. The Directorate General of Budget, Accounting and Statistics (DGBAS) of the ROC Executive Yuan forecasts a growth rate of 6.28 percent for Taiwan for 1998. In recent years, Taiwan has been making every effort to upgrade its industry and has achieved a smooth transition from a labour-intensive to a capital- and technology-intensive economy. Its heavy chemical and technology-intensive industries have enjoyed a growing share in total manufacturing output, which has increased significantly from 36.5 percent in 1982 to 66.3 percent in 1991, and the to 76.1 percent in January 1998. In terms of production value, this figure can be translated into US$167.6 billion in 1997. This represents a fourfold increase in 15 years.

2. Long-term Trade Surplus

The Asian countries particularly hard-hit by the financial crisis are those having long-term deficits in their current accounts. In contrast, Taiwan has consistently enjoyed a surplus in its current account in the international balance of payments. For the year 1997, this surplus was about US$7.7 billion. Commodity trading itself has a surplus of US$13.9 billion. Indeed, Taiwan has maintained consistent growth rates in both import and export for many years.

3. Low Foreign Debts

In addition, those countries struck heavily by the financial crisis showed a tendency to accumulate relatively large foreign debts. As of December 1997, Thailand had accrued a foreign debt approximately three times its foreign exchange reserves, Malaysia two times, Indonesia five times, the Philippines four times, and South Korea nine times. In terms of the ratio of external debt to gross domestic product (GDP), for Thailand, it was 60.7 percent; for Malaysia and Indonesia, 53 percent; for the Philippines, 84.3 percent; and for South Korea, 21 percent. In contrast, the ROC government had accrued a foreign debt of a mere US$74 million, or an insignificant 0.03 percent of its US$250 billion GDP in 1997. Its repayment of US$47.5 million for loan plus interest in 1997 accounted for only 0.04 percent of its total export of goods and services. Booming exports over the years have built up huge foreign exchange reserves for Taiwan. As of the end of 1997, Taiwan had about US$85.7 billion in foreign exchange reserves, placing it in a stronger position to withstand external shock.10

4. High Savings Rate

It is well known that Taiwan has sustained a high savings rate for may years. Between 1998 and 1997, its savings rate averaged 28.22 percent.11 Although the figure has shown signs of decline in the last few years, it has remained at a constant rate of 24.64 percent in 1996 and 1997. On one hand, this economic feat indicates stable economic growth, continually growing national wealth, and the availability of ample funds from private savings for the commercial sector. On the other hand, it underscores the success of Taiwan's financial sector in accepting savings and transferring private surplus funds from the savings into the hands of investors, thus enabling commercial investment plans to proceed smoothly and thereby accelerating the pace of economic development.

Because of the high savings rate, Taiwan's stock market transactions come mostly from local sources. Foreign funds account for less than 4 percent of the total market trading value. In other words, even if all foreign capital were to be withdrawn from the market all at once, its impact would be limited more to the psychological level. The substantial impact would be minimal. Taiwan's high savings rate, together with appropriate government countermeasures taken during the second half of 1997, made it possible for its investors and related securities companies to withstand the financial crisis and volatile cross-border capital movements. It is believed that this is another crucial reason behind Taiwan's strong economic immunity to the "Asian contagion."

5. Entrepreneurial Resilience

The strong resilience of Taiwan's small and medium-size enterprises is another factor that has minimised the impact of the financial turmoil on Taiwan. According to statistics, more than 560,000 companies are registered in Taiwan; of these, 0.6 percent have a capital of more than NT$200 million, and 98 percent have a capital of less than NT$50 million. It is evident that most of Taiwan's enterprises are small and medium-size operations, which are a marked difference from the situation in South Korea, where the emphasis is on developing large corporations.

It is these small and medium-size enterprises that form the major propelling force behind Taiwan's economy. They require a small capital and engage in a wide range of business activities. Their highly flexible mode of operations facilitates easy adjustment in light of changing economic conditions and rapid withdrawal from the market should they run bankrupt. The resultant social cost thus incurred is very low. Another factor worth drawing attention is the fact that the ROC government has established a Small and Medium-size Business Credit Guarantee Fund to enable such enterprises with great developmental potential to readily obtain funds from financial institutions when they are unable to provide a collateral for the loan. This is another reason why Taiwan's small and medium-size enterprises have not only survived but also continued to flourish. Moreover, the government requires commercial banks dealing primarily with credit loans for small and medium-size enterprises, to at least set aside 60 percent of its outstanding loans to the said businesses.

In sum, Taiwan had adhered to its consistent policy over the years prohibiting large corporations from monopolising the available funds in the banking sector.

6. Democratisation

On the political front, the ROC government has carried out a series of constitutional reforms. Democratic elections are held at both the central and local levels. The most recent ones include the elections of the governor of Taiwan province and the mayors of Taipei and Kaohsiung cities in 1994, the legislative elections in 1995, and the popular election of the president and vice president in 1996. Although the ROC is now a full-fledged democracy, the process by which it achieved its political accomplishments was by no means an easy one. Its check-and-balance system ensures that the society does not sustain severe losses unexpectedly. Meanwhile, the democratic system ensures the dignity and respects the values of individuals, inspiring them on to greater creativity and productivity, and ushering in a new era of entrepreneurial competitiveness.

7. Long-term Success of Taiwan's Fiscal Policy

For over four decades, Taiwan government has dedicated itself to maintaining a sound and stable financial sector. It has opened up ample national financial resources wh allowing only a reasonable tax burden on its people, and t fostering to rapid economic growth. Taiwan's remarka performance in the recent financial turmoil fully demonstra that economic development and financial stability are possi only when appropriate integrated economic planning as w as sound fiscal policies are implemented. Now let me elabo a little more on the role of the fiscal policy in econo development and stability.

THE ROLE OF TAIWAN'S FISCAL POLICY IN THE ASIAN FINANCIAL TURMOIL

1. TREASURY POLICY

1) To Control Government Bond Issuance

To ensure national financial stability and soundness, a to avoid the crowding-out effect to the private sec the government has set strict upper limits on both cen and local government debts. On January 17, 1996, t Public Debt Act was decreed. According to the Act, t total outstanding debt of all-level governments sho not exceed 48 percent of the previous three years' aver nominal GNP as projected by the Directorate-Genera Budget, Accounting & Statistics, the Executive Yuan.

For the goal to balance the central government bud by the year 2000, principally, each year's borrowi amounts should not exceed the previous year's level, a the ratio of outstanding debts to the GDP should not over 18.5 percent from 1997 to 2000.

On the other hand, Taiwan's bond policy has been qu sound; government bonds are issued under the prec of not impeding national financial foundation. The fu raised through the issuance of government bonds recent years were mostly used for financing pub construction projects. This can expand the pub investment properly, and effectively draw free cap from the private sector, which can be of considerable he to the development of national economy. The repaym of the bonds, however, should come from substanti governmental revenue (such as tax revenue) in the futu Several measures have been taken to restrain the increa of deficit and the issuance of government bonds, such restraining budget planning, limiting budget sca tightening governmental expenditure, strengthening de management, etc.

Furthermore, the debt-ceiling set by the Public Debt A would be strictly followed, the annual borrowi amounts and the repayment schedule of governme bonds shall be well planned. To maintain the soundn of the government fiscal structure, the increase expenditure scale and the outstanding debt are regula within an acceptable area.

To Promote the Development of High-tech Industry Through Governmental Direct Investment or Financing

To upgrade the industrial structure and solidify national economic development, a Development Fund, was established in 1973 by the Executive Yuan in accordance with the provisions of the Statute for Encouragement of Investment expired at the end of 1990, legal base for the Development Fund's establishment was switched to the Statute for Industrial Upgrade13 with the aim of promoting industrial upgrade and strengthening economic development through investment and financing measures.

In co-ordination with the government policy, the Fund is mostly invested in petrochemical industry at early stage. Since 1981, the government has been encouraging the introduction of high-tech from abroad and calling for the return of overseas Chinese experts, and the Fund's investment also focuses on the information and electronics industries. At present, investment areas include semiconductor, information, telecommunications, pharmaceutical production, electrical machinery and aerospace, with a total of 27 companies, worth some NT$20.9 billion.

Today, many globally renowned manufacturers, such as the Taiwan Semiconductor Manufacturing Company, were directly or indirectly supported by the Fund. The investments of the Fund proven to have positive impact on the development and upgrade of high-tech and other industries.

In addition to direct investment, the Fund also consigns banks to offer special-low-interest-rate loan to the designated groups by project. More than twenty projects have been implemented, such as "loans for the procurement of automation equipment", "loans to assist in the upgrading of small and medium enterprises", "loans for the development of new industrial products", and "loans for the procurement of pollution control facilities".14 By the end of April 1998, the loans totalled NT$50.96 billion. Since the establishment of the Fund, NT$459 billion for over 27,000 projects have been approved. 15

For stable economic development to take place, government infrastructure projects and private investment schemes need to be able to effectively utilise long-term funding. To find the best means of ensuring that this condition is met, the Council for Economic Planning and Development (CEPD) set up a task force by bringing together representatives from all relevant agencies, as provided for in the Executive Yuan's Economic Revitalisation Programme. After receiving the recommendations of the task force, partly based on a study of Japan's Fiscal Investment and Loan System and Singapore's Central Provident Fund System, the Executive Yuan, in June 1994, issued its Directions for Planning and Promoting the Use of Long-term Funding. In November 1994, the interdepartmental Committee for Planning and Promoting the Use of Long-term Funding was formally established under the CEPD.

Currently, the major sources of funding are incremental increases in the postal savings and life insurance reserves held in the Postal Remittances and Savings Bank. To be eligible for the Long-term funds, schemes must be revenue-producing and meet the needs of national economic and social development policy. By April 1998, the Long-term funds accepted 100 applications, and the investment totalled NT$1,690.4 billion while mid- and long-term loan applied was NT$721.4 billion. Among which, 35 projects are high-tech loans. Accounting for 35 percent of the total cases, the total high-tech investment value is NT$338.47 billion, about 20 percent of the total amount.

Furthermore, given the goal of turning Taiwan into a technological island, mid- and long-term capital funds will play a more active role to facilitate and guide the industry, in order to transform the industrial structure and enhance the international competitiveness.

2. TAX POLICY

(1) To Control Tax Burden and Raise Work and Investment Willingness

From the viewpoint of total tax burden, in 1993, the ratio of total tax revenues to GNP in Taiwan was 16.2 percent, which was lower than those of US (21.4 percent), Japan (19.6 percent), Germany (25.2 percent), France (23.2 percent), UK (26.4 percent) and South Korea (18.9 percent).16 Therefore, taxpayers in Taiwan have a lighter burden.

According to the taxation theory, taxes will affect the willingness of work and investment.17 In other words, the higher tax burdens are, the lower willingness to work and investment is, and lower economic growth will be. For a long time, my government has controlled the tax burden at a reasonable level so as to help people keep more after-tax income and to foster work, saving and investment willingness. This policy has contributed to an "economic miracle" for Taiwan and to sharpen the economic competitive edge of Taiwan's enterprises. That is why we can successfully survive the Asian financial crisis.

In general, the level of tax burden will depend on tax rate and tax preference. Take Taiwan's income tax as an example, compared with other countries, our top individual income tax rate of 40 percent is in the middle position. The numerous preferential tax treatments further lowered the real tax burden. Under the "Statute for Industrial Upgrade" and the "Income Tax Law", for

enterprises, the tax preferences include a five-year exemption for corporate income tax, an accelerated depreciation and investment tax credit. For individuals, these include an investment tax credit for individual income tax, exemptions for dividend income up NT$270,000 received by individual shareholders and for capital gain realised from the sale of securities.

Certainly, the effective tax burden for investors has been reduced and the investment return rate has been raised. This has induced a continuing inflow of new businesses. Although the aforementioned preferential tax treatments, such as a five-year exemption and investment tax credit, are all to encourage the pioneer industries and then to stimulate the development of the domestic related industries, yet they are not matching tax fairness since these tax incentives are given to some specific industries. At the current stage of economic development, this tax inequity should not be allowed to exist perpetually. Nevertheless, two or three decades ago, these tax incentives did present significant opportunities for the industries in Taiwan - the computer industries inter alia - to upgrade to a more advanced level.

In recent years, the ROC government has realised that it is necessary for the discriminating tax incentives to be discarded so as to create a tax equitable environment. Meanwhile, to further lower the tax burden of investors, the government implemented the integration system on January 1, 1998. Under this new system, the corporate income tax rate is 25 percent and the top marginal tax rate for individual income tax is 40 percent. Tax credits for the corporate income tax paid will be granted to shareholders when receiving dividends since 1998. Therefore, the total tax burden of the investors will be reduced from 55 percent to 40 percent. This tax reform not only makes the tax burden more equitable but also raises the domestic investment and consumption levels.

(2) To Provide Tax Incentives for the Development of Whole Productive Industry

As mentioned above, in order to improve investment environment and bring about economic growth, we implemented the "Statute for Encouragement of Investment" from 1961 to 1990. It provided some specific industries (e.g., profit-seeking enterprises, strategic industries and large-trade enterprises) with tax incentives that contributed to the transformation of industrial structure and industrial upgrading. Our remarkable achievement of economic growth has been hailed world-wide as an "economic miracle".

(A) The service life may be accelerated for the following fixed assets:

(a) Instruments and equipment for use in research and Development purposes.

(b) Equipment required for adjustment of indus Structure and improvements of operation methods of production.

(B) Tax credit may be given to the following investm

(a) Investment in equipment for automatio production or production technology.

(b) Investment in equipment in equipmer technology for reclamation of resources an pollution control.

(c) Investment in research and developm professional personnel training and creati internationally accepted brands or produc

(d) Investment in equipment or technolog energy saving and reuse of industrial wat

(C) Qualifying important technology-based enterpr important invested enterprises and venture ca investment enterprises may exempt from corp income tax for a period of five consecutive yea

On the other hand, to encourage expansio international trade and economic development established the duty drawback system for produ enterprises. Furthermore, since 1971, the Cus Import Tariff has been revised several times. import duties of industrial raw materials have steadily lowered to reduce manufacturing cos industries, which led to a prompt developme industry.

To accord with domestic and international econ environment, we have alleviated the tax burde industry through the above tax incentive meas which have helped enhance the competitivene industry and the development of the w industrial sector.

(3) To Undertake Tax Reform and Establish A Sound Environment

In order to reduce the degree of interference from tax and match the needs of the economic and so development, we have launched two important reforms since the mid-1980s. One was the sales tax re to implement a value-added tax; the other was the inc tax reform to draw up a scheme of the establishme the integration system. These two tax reforms have a sound foundation for our tax system and gradu created a favourable investment climate for indus and commercial enterprises. Therefore, Taiwan indus and macro-economy could be better nourishe composedly counter the adverse effect resulting fro Asian financial crisis.

(A) The Introduction of VAT to Improve the Efficiency of Management in Enterprises, Strengthen Competitiveness of Export Industry and Promote Capital Formation

During the 1980s, Taiwan's traditional agricultural society was transformed into an industrial and commerce society in which most production and marketing were professionally separated. The old sales tax was levied on the gross business receipts at every selling stage and the tax paid at previous stages could not be used for credit against output tax at the following stage. Multiple taxation was thus created. We found that those defects would bring about detrimental impact on the commodity distribution and business operation types. Moreover, export was hampered by the inability to exclude all tax elements imbedded in the export prices, which increased the cost of exports in international market and was disadvantageous to the long-term development of our export-oriented economy.19 In order to improve the sales tax system, the value-added tax (VAT) was introduced in 1986.

After the implementation of VAT, the multiple taxation is eliminated and the efficiency of management in enterprises is improved. In addition, the VAT treats exports as zero rating, so it reduces manufacturing costs and hence makes exports much more competitive in international markets. Moreover, the VAT paid for acquiring machinery and equipment can be used for credit against output tax, so that the sales tax burden of capital goods is lower. The cost of investment is substantially reduced and the rate of return on investment increased. It was therefore helpful to promote the private capital formation. Basically, VAT systems does meet the requirements of industrial and commercial development and make a remarkable contribution to the whole industries.

(B) To Implement the Integration System and Establish A Low-Tax, Barrier-Free Investment Environment

By 1998, the income tax system was in a form of a so-called classical system. Business profit were first taxed at the corporate level, and the after-tax profits, once distributed to individual shareholders, were again subject to the individual income tax. As a result, this double taxation distorted the distribution policy of enterprise and the efficiency of the capital-operation was violated. In the late 1990s, due to an urgent transformation of economy and a severe competition from international market, the Ministry of Finance proposed the integrated income tax system to maintain the competitive ability of the industries. By eliminating the double taxation burden on invest income, and thus create a low-tax and barrier-free environment for investment. The more favourable climate would boost investment willingness, stimulate consumption and generate a positive effect on January 1 this year, would not only lower the total tax burden but also sharpen the international competitive edge of Taiwan's enterprises. Even during the financial crisis that has been plaguing the eastern Asia region since last August, Taiwan still benefited from the aforesaid positive effect of the domestic demand. While the relevant eastern Asia countries experience a decrease of consumption from the financial crisis, Taiwan's total values of exportation is therefore reduced. Nevertheless, the integrated income tax system would play a significant role in helping minimise the negative effect on the macro-economy.

3. FINANCIAL POLICY

According to the 1998 report on Global Competitiveness released by the Lausanne Institute for International Management Development (IMD), Taiwan's ranking has moved up seven notches from No. 23 in 1997 to No. 16 in 1998, even higher than Japan in terms of global competitiveness. Among the various factors leading to the IMD ranking was Taiwan's financial strength which ranked the 19th, up from the 23rd in 1997. The indicator is determined by such elements as capital costs, supply of capital (that is, degree of difficulty in obtaining credit loans or capital for business establishment, accessing foreign capital, etc.), the vibrancy of the stock market, and the efficiency of the banking sector (that is, Central Bank policies, scale of banking operations, financial laws and regulations, etc.). You could say that Taiwan's financial stability and strength is an important factor behind its ability to withstand the recent financial turmoil. The following sub-sections will outline in greater detail the factors underlying our sound financial institutions.

(1) Reasonable Investments in Real Estate by Financial Institutions

(A) Loan Restrictions on Real Estate Investment

In the 1980s, an oversupply of capital resulted in the banks providing far too many secured loans on real estate. This excessive flow of capital from the banking sector into the real estate market made the land prices skyrocket in Taiwan. On December 1, 1998, the Central Bank raised the required reserve ratio of deposits in an effort to cool down the overheated real estate market. However, this move failed to curb the situation.

Following a consultation with the Ministry of Finance, the Central Bank announced on February 28, 1989 a new ceiling capping the

amount of secured loans that a bank could extend on real estate. This selective credit control measure was taken in hopes of curbing speculative activities on real estate. However, it also affected capital flow and allocation as well as its supply and demand. By the mid-1990s, this short-term measure had slowed the soaring real estate prices to a moderate growth and the construction industry no longer enjoyed its earlier boom. Thus, in order to avoid a depression in the construction industry and the subsequent increase in bad debts for the banks, which might in turn trigger off a financial storm, the selective credit control measure was abolished in September 1996.

(B) Regulation of Real Estate Investment by Banks and Insurance Companies

The major activities of a bank are to accept deposits and supply credit loans. Its success and failure play a vital role in maintaining economic and social stability. Therefore, capital liquidity must be regulated to strengthen banking operations and protect the interest of depositors. Although there is no direct relationship between real estate investments and banking business operations, such investments must be subject to regulation to prevent credit oversupply by banks and to ensure sound financial development. In 1975, an amendment of the Banking Law stipulated that a commercial bank may not invest is in line with a government economic development project and has been approved by the competent central authority. Besides, investment in real estate for self-use may not exceed the net worth of the commercial bank at the time of investment. These requirements were designed to prevent banks from over-investing in real estate and thus affect their capital liquidity.

In the 1980s, some of Taiwan insurance companies invested heavily in real estate, helping in part to boost the prices up. In 1992, the Insurance Law was revised to lower the ceiling ratio of real estate investments to total capital from one-third to 19 percent for insurance companies. This in effect slowed down the growth rate of real estate investments by insurance companies. In 1997, real estate investments made up only 8.3 percent of the total capital, down from 24 percent in 1986. During this ten-year period, Taiwan's insurance sector multiplied 12 time in terms of capital while its investments in real estate only quadrupled.

The improper use of capital often leads t shortage of capital surplus for domestic i investments and capital formation. Its us speculative activities or arbitrages can cause estate and stock prices to soar to undesira levels. Industry will be undermined. To m matters worse, if the bank supervis mechanism does not function well, the a quality will quickly deteriorate, t endangering the banking system. The East A financial crisis fully demonstrates that p economic fundamentals and ineffective b supervisory mechanisms can bring se catastrophes to a nation, and incur se catastrophes to a nation, and incur severe a irrecoverable financial losses for the peo Taiwan has set a good example in this c having imposed restrictions on real es investments by commercial banks and insura companies to effectively ensure the proper of capital and stable economic developmen

(2) Ample Capital Resources from the Financial Sys

(A) Capital Resources for Small and Medium- Enterprises

As mentioned above, small and medium- enterprises form the main support in Taiw business structure. According to governm statistics released in March 1998, small a medium-size businesses accounted for percent of Taiwan's total production output a provided 78 percent of its job opportuni These figures underscore the imme contribution by small and medium-size busin to Taiwan's economic development. In the p one year, Taiwan has demonstrated its str immunity to the Asian financial contagion success is closely hinged on the governm policy of providing financial assistance to sm and medium-size enterprises. In view of th businesses' difficult access to financing and t more fragile financial structure, the governm has undertaken several measures to ma funding available and to provide guidance financial management to these firms. To reso the problem of credit loans, the governm subsidised the establishment of a small a medium-size business financial guidance syst formed by the financial institutions, the Sm and Medium-size Business Credit Guaran Fund, and the Small and Medium-size Busin Consulting Agency. This system was desig to provide consultation services on financ and financial management system to small a medium-size enterprises. A criterion w established that medium business banks m

extend at least 60 percent of its credit loans to small and medium-size businesses. These banks are also required to monitor the use of the Small and Medium-size Business Credit Guarantee Fund, closely co-ordinate with financial institutions in providing collateral loan services to small and medium-size businesses, and assist them in obtaining operating capital from financial institutions.

(B) A Booming Capital Market and Adequate Funding for Listed and Quoted Companies

In recent years, the liberalisation and globalization of Taiwan's securities market have led to a boom in the capital market. Funding channels have increased for the entrepreneurial sector and many companies have easily raised the targeted capital through direct financing in the capital market. Listed and quoted companies raised funds by issuing new shares of NTD451.2 billion in 1997.20 As a result, the debt ratio of Taiwan's enterprises was relatively low. The average debt ratio for large companies was about 109 percent and, for medium-size or smaller companies, about 200 percent, which are much lower than the 400 percent among South Korean companies. This low debt ratio is reflected in Taiwan's sound financial status, which has enabled it to counter negative impact from both domestic and international factors. And this is one thing that is missing among most East Asian countries.

(3) Mergers and Acquisition

In 1997, many financial companies in Thailand were forced to liquidate their businesses due to bad loans - proof that small and ill-managed financial institutions could set off a financial crisis and that its inability to resist the onset of a financial turmoil could broaden and deepen the crisis if and when it arises.

As Taiwan's financial sector has become increasingly liberalised and globalized, growing competition has seen a decline in profits and deterioration of assets quality among community financial institutions. Upon conducting an in-depth study of the domestic financial situation and the financial developmental experiences of advanced countries, the ROC Ministry of Finance decided to encourage sound and healthy credit co-operatives to upgrade their services and to transform their operations into commercial banks. The ministry also guided the merging of local banks and credit co-operatives with a poor performance record, so as to increase operational efficiency. Since early 1997, five credit co-operatives have become commercial banks, and another nine have been taken over by local banks. This policy has set an exemplary model in providing credit co-operatives a clear sense of direction for development. It has also significantly contributed to the stability of the domestic financial market, safeguarded the rights and interests of depositors, and averted the onset of a financial turmoil.

REPORT OF DIALOGUE

13 November 1998

BETWEEN
INLAND REVENUE BOARD (IRB)
AND
MALAYSIAN INSTITUTE OF ACCOUNTANTS (MIA)
MALAYSIAN INSTITUTE OF TAXATION (MIT)

1999 BUDGET ISSUES

It was informed that the IRB is still working on the necessary legal structures to implement the 1999 Budget proposals. The detailed provisions are expected to complete before the end of next year. The waiver may be achieved by issuing a Ministerial order. The Ministry of Finance have made some policy decisions, but many issues have still not yet been resolved.

A. CHANGE OF BASIS OF ASSESSMENT

Policy No. 1 -
Tax on Income Received In 1999 Will Be Waived

The IRB informed that although the Ministry of Finance (MOF) has decided on the policy that income tax for basis period 1999 will be waived, the detailed rules have not been finalised.

Following the above policy, it was clarified that :

a) All taxpayers still have to submit their tax returns for the basis period 1999, presumably in the year 2000, and compute their tax liability accordingly.
b) It follows that capital allowances, business losses, reinvestment allowances, investment tax allowances, etc. will be reckoned with before arriving at the chargeable income.
c) Where a company enjoys tax incentives such as reduced rates, reinvestment allowances, investment tax allowances etc. the income tax suffered, whether at reduced rate or on income not absorbed by the allowances claimed, will also be waived.

Policy No. 2 -
Income received in 1999 means income received in basis period 1999 (i.e. income received in the financial year 1999).

IRB informed that the income tax on income from busin source will be waived for basis period ended during t year 1999. Income tax on income from other sources w be waived for the basis year ended 1999.

Where taxpayers change their accounting year end a resulting in a longer basis period for 1999, the IRB h indicated that it will not allow the waiver to income f the extended period unless the change is pursuant to leg requirements. IRB has not come out with the detailed rul yet.

The IRB has warned that where profits are shifted so a to enjoy the waiver, the existing anti-avoidance provisio in the Income Tax Act 1967 will be invoked.

Similarly, there are no detailed rules issued for business commencing during the year 1998 and 1999 and how th waiver will apply

IRB confirmed that where a company having a financi year end other than 31 December, say 30 June 1998, ceas or liquidates in 1998 after its financial year end, say 3 September 1998, the income for the period from la financial year end to the date of cessation or date o winding up (i.e. 1 July 1998 to 30 September 1998) is st entitled to the waiver since the income falls under th basis period 1999.

Policy No. 3 -
Incentive granted which covers the basis period 19 will not be extended to make good the one year "lost"

IRB indicated that it will not extend the incentive reli period which include the basis period 1999.

Policy No. 4 -
Income includes ad sources of income. However, incom

***of a non-resident individual residing in Malaysia for a* short duration will not be waived.**

IRB informed that income tax will be waived on all sources of income but there may be timing difference of the waiver for sources such as **dividend**.

It has not been decided whether **withholding tax** would be waived, however, IRB is more inclined towards non-waiver. As the law now stands, taxpayers are advised to withhold the tax where applicable. However, where the recipient is not chargeable to income tax due to the waiver, the recipient can claim for a refund of withholding tax suffered.

Employers are advised to continue to deduct STD accordingly until otherwise directed by the IRB.

IRB informed that non-resident corporations, permanent establishments and Malaysian branches of foreign companies, may enjoy waiver of income tax in respect of income received in basis period 1999.

Policy No. 5 -
Income of expatriates who have a short stay in Malaysia shall not enjoy the waiver

Income of a **non-resident individual** residing in Malaysia for a short period will not be able to enjoy the waiver. The definition of short period has not been determined. It may well cover more than a year and includes expatriates commencing or terminating employment in Malaysian during 1999. As such, income tax on remuneration of a public entertainer coming to Malaysia in 1999 will not be waived.

Generally, if an expatriate has been working in Malaysia prior to 1999 and continue his employment to 2000, he is likely to enjoy the waiver.

Dividend

IRB advised that as the law now stands, depending on the nature of account from which the dividend is paid, dividend paid in 1999 may or may not be **franked** (tax deducted at source). Although no policy decision has been made in respect of this, the IRB has indicated that dividend paid out of prior years profits might not be allowed the waiver. It follows that dividend franked by Section 108 account will not be waived, consequently recipients are entitled to **Section 110 relief/refund** for dividends received.

The chargeable income for 1999, on which income tax is waived, may be credited to **a special tax exempt account**, and dividend paid out of the account will be exempted from income tax in the hands of shareholders.

Residence: Determination of Resident Status

Under preceding year basis of assessment the residence status of a taxpayer is determined by his behaviour in the preceding year. What are the rules for determining the residence status of a taxpayer under current year basis of assessment when submitting the tax returns?

IRB informed that they are still working on the rules and no policy has been decided yet.

Interest

IRB informed that there is no policy decision on whether the 5% withholding tax on interest deducted under Section 109C will be waived but suggest that it is unlikely to be waived.

Clarification: Upstream Petroleum Companies

The change to current year basis of assessment does not apply to upstream petroleum companies taxed under PITA 1967. Consequently these companies will not be eligible for the waiver/exemption for income received in 1999.

Clarification: Industries assessed under world scope

IRB confirmed that foreign income of banks, insurance companies, sea and air transport undertakings which are assessed under world scope basis, will be eligible for the waiver.

B) SHIPPING OPERATIONS

IRB clarified that it will not regard an operator of **tour ship** registered in Malaysia as carrying on a shipping business as the business is not for the purpose of transporting passengers as such the income is not exempt. However the **crew** working on board of such ship will be considered as exercising an employment on board of a Malaysian ship for the purpose of income tax exemption under Schedule 6 to Income Tax Act 1967.

C) GROUP RELIEF FOR FOOD PRODUCTION

IRB confirmed that the incentive is only available if a **direct subsidiary-holding** relationship exists between the claimant and the surrendering company, or both claimant and the surrendering company are directly controlled by a same holding company. This does not cover situation whereby the claimant and the surrendering company are interposed with different intermediate holding company but are controlled by the same ultimate holding company.

The incentive is available to new projects only and covers deep sea fishing and fish rearing activities.

IRB further clarified that the surrendering company may surrender to more that one company. Similarly the claimant can utilise the losses of more than one surrendering company. The mutually exclusive provisions only apply to surrendering company and the claimant may be enjoying other incentives.

D) TAX TREATMENT OF INTEREST-IN-SUSPENSE (IIS)

1) IRB confirmed that leasing companies are scheduled companies and at not regarded as financial institutions. Therefore it is not eligible for the incentive.

2) Under the Budget proposal 50% of the IIS will not be considered as income by way of deduction as specific provision for doubtful debts against the interest receivable. MIA/MIT has pointed out that the remaining 50% of the IIS may still claim against the interest income as irrecoverable debts under Section 34(2) of the Income Tax Act 1967. However, direction from Bank Negara Malaysia on the accounting mechanics of treating IIS will have an impact on the tax treatment.

   IRB will clarify after they have studied the circular of BNM.

E) INTERNATIONAL TRADING COMPANIES

The IRB informed that the guidelines prepared by MATRADE and is almost finalised. It will be issued within the next 2 month.

Exporting of local SMI manufactured goods will be the criteria for application of the incentives.

F) EXEMPTION FROM REAL PROPERTY GAINS TAX AND STAMP DUTY ON MERGERS OF FINANCIAL INSTITUTIONS COMPLETED BETWEEN 24. 10.98 TO 30.06.99

1) The IRB commented that a merger would be considered as completed at the date the purchase of shares is completed. Where the merger is carried out in steps, each step would enjoy the relevant exemption provided all steps are completed by 30 June 1999. If all the steps are not completed by that date, the exemptions for the earlier step would be withdrawn.

2) It further clarified that for the purpose of Real Property Gains Tax, the real property transaction under the merger will be treated as a "no gain no lo transaction and not exemption.

3) The IRB confirmed that the scope of financ institutions does not include insurance company

G) LEAVE PASSAGE

1) Although the benefits accorded to the employe restricted to RM3,000, the cost to the employer is s totally disallowed under Section 39(l)(m). I indicated that the law will not be reviewed in t near future.

2) IRB confirmed that leave passage incurred bef 23.10.98 will not be taken into consideration for t RM3,000 restriction.

H) SELF-ASSESSMENT

The IRB informed that they era still studying the le framework to implement the self-assessment system. self-assessment committee will be set up jointly by t IRB and MIA/MIT to provide technical input for t implementation of the system.

I) REINVESTMENT ALLOWANCE

Although increase in the productivity is no more prerequisite for a resident company to qualify f reinvestment allowance, it is still condition for applyi set off against 100% statutory income. The sole meth of measuring the level of productivity adopted by the I is the process efficiency ratio (PER).

The IRB informed that it is aware of the weakness of t Process Efficiency Ratio (PER) which has not taken in account the price competition factor. Nevertheless it h no intention to adopt another criteria. It has pointed o *that the taxpayers will not lose out but merely stretch t* claim of reinvestment allowance over a longer period.

It was pointed out that some taxpayers were not success in claiming reinvestment allowance for the year assessment 1998 due to decrease in PER. Even with th announcement that the increase in productivity crite will be withdrawn, assessors still insist that since th Finance Bill has not been gazetted, the taxpayers are n eligible for the allowance and notices of assessment a issued accordingly.

Application for the allowance will not be processed. Th will result in duplicate work, both for the IRB and th taxpayers, as there is no way the law will not be gazette MIA/MIT request the IRB to reconsider the stand a

instruct the assessors to process the application for the allowance and to allow the taxpayers to claim the incentive.

IRB disagree with the proposal to allow the taxpayers claiming the allowance but agree to study the matter [By a letter dated 17 November 1998, IRB agree to standover tax arising from disallowance of reinvestment allowance claimed for the year of assessment 1998.]

AMENDMENT TO NON-RESIDENT RELIEF

Under Article XVII of the Double Taxation Agreement between Singapore and Malaysia, individuals who are residents of Singapore shall for the purposes of Malaysian tax be treated as Malaysian citizen not resident in Malaysia, and vice versa.

With the proposed amendment to Section 130 of ITA 1967, non-resident relief is granted only to Malaysian citizen not resident in Malaysia by reason of exercising his employment in public services or in services of a statutory authority outside Malaysia.

IRB confirm that Singapore resident with Malaysian income will no longer entitle to the non-resident relief The Singapore tax authority will probably reciprocate and withdraw the non-resident relief granted to Malaysian having Singapore income.

K) INCENTIVES FOR SPORTS, CULTURE AND ART COMPLEXES

The IRB is still looking into the definition of organiser. Sub-contractors providing food or accommodation facilities will not be considered as organisers.

The exemption will be given at statutory income stage.

L) REFINANCING OF TERM LOAN EXEMPTED FROM STAMP DUTY

IRB clarified that the incentive is strictly for businesses to refinance their existing term loans with new term loans. Thus an individual refinancing Ms term loan for housing/ property is not eligible to the exemption. Similarly, a company refinancing its corporate bond with term loan is also not eligible for the exemption.

IRB has indicated that sight of original old and new document may be required to ensure that the refinancing is from term loan to term loan and remission is only in respect of the outstanding balance of the principal of the old loan.

M) Y2K EXPENDITURE

IRB informed that a rule will be issued on Y2K expenditure probably by the end of the year. It is likely that the capital costs of acquiring software, etc. would enjoy accelerated capital allowances.

The meeting ended with note of thanks to the Chair.

QUESTION & ANSWER COLUMN

Beginning from next year, the Institute will create a Question & Answer Column under Students Section as a regular feature in this journal. Students may forward all your questions either by fax or mail to:

Question & Answer Column
Education & Training Committee
Malaysian Institute Of Taxation
No. 2, Jalan Tun Sambanthan 3, Brickfields
50470 Kuala Lumpur

Fax No : 03-2471783

Suitable Questions & Answers will be published in this journal. Students are encouraged to send in as many questions as possible.

Important Note :

This column is strictly for registered students of the MIT.

Students are required to quote their student registration number. Please take note that questions raised by those who have not quoted their registration number will not be entertained.

The Institute reserves the right to decide on whether or not to publish the questions raised.

REPORT OF MEETING BETWEEN

Inland Revenue Board
(*Bahagian Operasi*)

And

Malaysian Institute of Accountants (MIA)
Malaysian Institute of Taxation (MIT)
Malaysian Association of Certified Public Accountants (MACPA)

20 August 1998

Chaired by:
PN HASMAH ABDULLAH
Assistant Director-General, Operations Division, IRB

MATTERS ARISING FROM PREVIOUS MEETING

Liaison with the IRB Officers

A list of names, addresses and contact telephone numbers of IRB officers was distributed to the representatives of various professional bodies.

Penalty on Filing of Incomplete Income Tax Return

IRB informed that penalty will be imposed on filing of incomplete tax return. It was also explained that penalty revision is an internal matter.

With regard to the concern that heavy penalty (maximum 300%) may cause difficulty to taxpayers, particularly to the lower income group, IRB stressed that under the provisions of Income Tax Act (ITA) 1967, Director General (DG) is empowered to exercise discretion when imposing penalty. This issue will be dealt with on a case by case basis, depending on the financial position of the taxpayers.

Seizure of Documents

The auditors claimed that the audit working papers belong to the auditors, and not to the taxpayers. As such they should not be seized by the Investigating Officers (I.O.) from IRB. Alternatively, the document was privileged communications between auditors and taxpayers and thus should not be seized by the IRB. The IRB is of the opinion that the audit working papers and documents would still be under the purview of S.80 of ITA. Moreover audit working papers and documents are not privileged from disclosure under S. 142(5)(b) of ITA 1967.

A proposal was made to the IRB during the last meeting that instead of taking away the original documents, photocopies of document were made in the presence (or under the supervision) of the I.O. and kept by the IRB. IRB thought that this is not feasible as at the point of investigation the number of document to be photocopied is huge. In addition, for legal reasons, IRB has to keep the original document. IRB suggest that taxpayers photocopy what they require at the IRB premises.

Mr. Lee Yat Kong informed that MIA has been receiving feedback from members that some I.O. are reluctant to release the document seized. Mr. Lee explained that as the business is still going on, taxpayers need to continue writing up the books and auditors require the prior year document to commence auditing. It may not be practical to photocopy the required document as numerous is involved. In the past, the I.O. only seized the document they required and return the seized document very quickly. Mr. Lee suggested that IRB may consider issuing a guideline/ circular to set a time frame for returning the document and working papers.

Mr. Andrew of MAICSA added that even for cases where settlement compromise has been reached subject to the agreement by DG, the I. O. seemed reluctant to release the document seized. Although IRB generally will not seize the current year working papers, audit in effect is the verification of prior years transactions and most of the document required by auditor is actually held by the IRB. As a result, it causes a considerable inconvenience to the taxpayers.

IRB informed that settlement takes time because of verification and checking. It is also due to some taxpayer's reluctance to come to settlement. Therefore until a case is settled and agreed

the DG, documents will not be returned to taxpayers.

Puan Hasmah concluded that the matter will have to be referred to the management concerned to study how best this be dealt with for the benefit of both sides.

Compound Fee for Late Filing

Currently there is a lack of uniformity on compound fees imposed on late filing. This is due to the fact the there has been a revision on the rates of compound fees imposed and only current rates were input into the computer, as a result new rates of penalty were imposed on the revised assessments. IRB informed that direction has been issued to resolved the problems.

Dissemination of Information

IRB informed that circulars to officers are intended for internal circulation and are not disseminated to the public or professional bodies. Guidelines however will be issued to the public and professional bodies.

ISSUES RAISED BY THE PROFESSIONAL BODIES

Delay in refund/repayment of tax

There are constraints on both the IRB and the tax agents/ taxpayers to expedite the matter. Currently 75% of the refund/ repayment cases have met the target as promised in the IRB performance charter. IRB is now studying the procedure to improve further. With the computerized systems, it is hoped that situation will improve tremendously.

Delay in Registration of C files

IRB policy is to give priority to company which has commenced business. In emergency cases, taxpayers have to submit the draft accounts before they can obtain C file numbers. IRB informed that where the computerized system is down and registration cannot be made, actions will be taken immediately after the systems resumed. IRB observed that taxpayers rush in to register C files at the last minutes for the purposes of application for extension of time and application for CP38SA Instalment Payment, has partly aggravated the problems. To alleviate the problem, Cawangan Syarikat of IRB has relaxed extension of time requirements by allowing taxpayers extension of time even if they do not have CP38SA, but coming up with a letter stating there is a chargeable income.

Mr. Goh of MIA sought confirmation from IRB that where the business has not commenced, the company does not need to register C file number. Puan Hasmah confirmed.

IRB informed that they are studying a system whereby in future once E number was requested, automatically a permanent Income Tax file number will be allocated. In the case of Representative Offices (Rep. Off.), where there were E numbers but no business were carried on in Malaysia, C numbers will also be allocated but the Rep. Off. need not file return if they did not derive income from Malaysia. For investment holding companies, although E number is not required, they may still register for a permanent C file number if they derived investment income from Malaysia.

Certification of Passport

MACPA raised the difficulty of obtaining certification of passport for staff working on oil rigs which are situated away from the IRB/embassy office. IRB was asked to consider a proposal to accept certification of copies of passport by Immigration office at ports set up to handle movements of workers to the rigs. Puan Hasmah had no objection to the proposal provided the Immigration has no objection to meeting such request from taxpayers.

Valuation of Shares of Private Companies for Stamp Duty Purposes

It is noted that the Kuala Lumpur Stamp Office applies a price earning (PE) multiple of 18 or more in determining the value of shares transferred between private companies. In the past when the economy is buoyant, the PE ratio of 18 served as a good guide to reflect the market situation then. In special cases, taxpayers may write in for review of the multiple adopted to reflect the market price.

Under the current economic turmoil, it is proposed that the authority revised the multiple to a level more reflective of present economic conditions so that taxpayers do not always have to appeal for a review. In special cases, the taxpayers may still appeal for a review.

Mr. Goh of MIA further added that in many cases valuation by PE multiple may not be relevant, as these shares were held for generations and cannot even be trade in open market.

It is further proposed that where a transaction is carried out at arms-length, the price of shares as agreed by a willing buyer and willing seller should be taken as the market value and subject to stamp duty.

Puan Hasmah will bring these issues to the appropriate division.

Employers' Obligations under S. 83(3) and S. 83(5) of the ITA 1967

Amendment to S. 83(3) of the ITA 1967 became effective from 1 January 1997 whereby notification of cessation of employment (in prescribed Form CP22A) is no longer required. However, no corresponding amendment has been made to S. 83(5), which provides that employer must withhold money due to an employee who has ceased employment.

IRB emphasized that employers must ensure that they have complied with the exemption under S. 83(3), then there is no need to withhold the money under S. 83(5). In the case of uncertainty, they should continue to withhold money due to the employee.

Reinvestment Allowance (RA)

IRB informed that certification by external auditors on the Reinvestment Allowance claim is no longer required beginning from Year of assessment 1998.

Mr. Quah of MIT pointed out that RA new rulings effective from 17 October 1997, and there were qualifying expenditure incurred before and after that date for a qualifying project. For the purpose of claiming RA, when does the 5 years period commence? Is it commenced from the date the expenditure was first incurred or the date the qualifying project was completed? IRB will bring this issue to the technical division.

Time Limit for Issuing Assessments

With effect from 1999, the time limit will be reduced to 6 years. As such many protective assessments were being raised by IRB. Under the ITA 1967, the tax raised has to be settled notwithstanding any appeal. It is proposed that in view of current economic conditions IRB review its collection policy in respect of these cases, so as to allow more time to settle the taxes so raised. IRB responded that they have approved rescheduling of tax payment based on merit of each taxpayer.

Mr Veerinderjeet Singh of MIT said that due to time constraints there have been a lot of calls from IRB requesting for information. However, the officers refused to follow up the query with an official letter. For simple cases such as confirmation of information, tax agents will oblige since this will expedite finalisation of assessment. However, where information relates to back years, tax agents will have to obtain the information from taxpayers who will then request for the letter.

IRB clarified that it is not the practice of IRB to request for information orally. However, in view of the time constraints, this was done with the intention to expedite the finalisation of assessment. Puan Nik Esah do agree that where much of the information requested relates to prior years, it should be followed by an official letter. She appealed to tax agents to help in this matter because some tax agents are using this procedural irregularity as a delaying technique.

Storage of Document

IRB informed that the issue whether storage of document via electronic means is acceptable has been referred to the management. Tax agents will be duly informed of any decision on this matter.

Communication of Information to Taxpayers

Recently there were a number of guidelines issued by the I It was proposed that IRB issued these guidelines as prac note and numbered them.

Expenses on attending Seminar and Courses

Section 46(1)(f) of ITA 1967 provides for personal relie RM2,000 on fee expended for any courses of study in a institution in Malaysia recognized by Governm undertaken for the purpose of acquiring technical, vocatio or industrial skills. Mr. Quah of MIT enquired for the lis institutions recognized by Government and what is t interpretation of technical skills.

Puan Hasmah will request the Technical Division to respo

Interest Restriction

There have been instances where deposits placed in ban collaterals for working capital are treated as investments a subject to interest restriction. Mr. Quah suggested that m be IRB can reconsider the stand as the deposits are demand by the bank for extending the working capital.

IRB informed that this issue will be dealt with based on t merit of each case. It was suggested that since this is a spec case, the taxpayers/tax agents concerned can discuss w the head of respective offices.

It has been brought up that Pernas Securities case has gi rise to certain position that will be applicable in term of inte restriction computation. Clarification was sought whether I will accept tax computation based on the princi propounded in the case. If it cannot be applied in gene the practitioners hope that IRB can give the rationale beh so that they can explain to taxpayers.

IRB is of the opinion that Pernas Securities case is not t precedent. IRB has put up another test case to the Court.

Mr. Beh enquired if assessment is finalized based computation which is prepared in accordance with IR guidelines, taxpayers will require some form of provis whereby if the Court later affirmed Pernas Securities c then their case will be subject to review for similar treatm It will definitely cause delay.

Communication with Taxpayers

Mr. Lee Yat Kong of MIA pointed out that sometimes correspondence with taxpayers/tax agents do not contain recipient name and reference. It only states the Income File Reference Number. In the case of Perak Branch, this been resolved.

took note of the above issue and will inform all branch ...s to quote the tax agent's reference number.

...ay in Attending to Appeal Cases

...Goh of MIA said that he has some cases where Form Q ...e been filed and for years they were with the IRB until ... Some of these cases are Real Property Gains Tax (RPGT) ...s and the lawyers refused to release the balance of the ... proceeds because there were no clearance letters from ... IRB. Mr Goh enquired what steps could IRB take to ...edite clearing of these Q Forms which have stuck in the ...

...n Hasmah said that IRB is doing their best to clear the ...peal cases. It was suggested that Mr Goh deal directly with ... Head of Companies Branch to resolve the matter.

...uble Taxation Agreement (DTA)

... Veerinderjeet Singh of MIT explain that at the moment ...ere is no official channel of knowing the status of DTA ...gotiation Malaysian government had with the foreign ...untries. Practitioners have to enquire Ministry of Finance ...OF) on the latest developments. Recently the MOF staff ...s redirect the practitioners to the International Tax Division ... IRB for information.

... Veerinderjeet Singh suggested that IRB may consider some ...m of press release through practitioners' journal, such as ... Nasional of MIT, to inform the practitioners when the ...A was signed and when it was rectified.

...an Hasmah said she noted this point and will take this up ...h the International Tax Division.

...nefits-in-kinds (BIK)

... Quah Poh Keat of MIT points out that despite the revision ...ards of BIK value last year the Companies Branch still ...allow certain expenses which were already assessed on ... employees as BIK. Mr. Quah suggested that may be IRB ... consider making a policy whereby if an expense is ...luded in the BIK of employee, then the expenses would ...matically be allowed in the tax computation of the ...pany

...n Hasmah took note of the point and will look into it.

...lification of tax Agents under Section 153 of ITA 1967

... noted that many applicants for S.153 tax agents licence ... misconstrued the required qualifications. IRB advised ... applicant must acquire 3 years post-qualification ...erience. Experience acquired before obtaining the ...demic qualification will not be considered.

CODE OF ETHICS

Puan Hasmah informed that feedback received from various branches showed that tax agents generally do not adhere to the code of ethics in conducting their professional dealings with the IRB. Some of the issues are listed below:

Administrative non compliance

1) Tax agents have failed to quote their approval number in their correspondence with IRB.

2) Where tax agents have ceased to be tax agents of the taxpayers, they failed to inform the IRB. Only when annual tax return form is sent to them, then they return the tax return form.

3) When accepting a new appointment, the tax agents failed to inform the IRB of the new appointment.

4) There is a lack of communication and cooperation among the auditors and the tax agents. The ex-tax agents generally are reluctant to provide information required by the new tax agents, resulting in the new tax agents coming to IRB to obtain the enquired information.

5) It appears that the networks of communication for the professional bodies are not extensive enough. The conduct of some tax agents outside Kuala Lumpur and major towns does not seem to reflect the understandings reached between IRB and the professional bodies. It is either they are not aware of the understandings or they are not following the understandings.

6) Tax agents are quick to request for finalisation where there is a reduced assessment. Where there is additional assessment or where adjustments in one year increase the assessment of other years, tax agents generally do not follow up and IRB has to chase for the revised tax computations

7) It was noted on several cases that tax agents licence has expired and no renewal was given.

   IRB reminded tax agents under S.153 ITA 1967 that renewal of licence is FOUR (4) month before expiry date. Tax agents must ensure that their licence are in order when dealing with IRB. It was pointed out that this is partly due to the approving authority which has constantly extending the processing time (from 2 month to 3 month and now 4 month). It was suggested may be the licensing period be extended.

Technical Misrepresentation

During the recent meeting between IRB and Public Accounts Committee (PAC), it was revealed that apparently there is a

lack of moral obligations on the part of tax agents in carrying out their duties as responsible tax practitioners.

1) The Auditor General office had found that in many cases IRB was misled and allowed incentive claims in good faith based on computation submitted by accountants/ tax agents. The claims were found to be inappropriate due to one or more of the following:
   a) expenditure clearly not eligible for incentives was included in the claims
   b) Incentives claimed were allowed in good faith but in fact application for the incentives has never been effected.
   c) the taxpayer is not eligible for the claim. (For example, a tax agent has claimed RA for a taxpayer who is not a manufacturing company nor having any manufacturing activities.)

   PAC view this very seriously as provisional assessments were raised based on the tax computations submitted and there is clearly an erosion of national revenue. IRB were further disappointed with the respond received from the tax agents who when confronted with the matter claims that it is not their duties to add back disallowable expenses.

2) It was noted that some tax agents have not advised taxpayers properly and/or handled their cases carefully. Upon receiving the notice of assessment, errors were discovered and an appeal was made as if IRB were at fault.

3) Tax agents do not prepare the tax computation according to the guidelines issued by IRB. (For examples, large expenses were not supported with documentary evidence, details of rental income and expenses are not provided, etc.) They should show their clients the proper way to prepare the tax computation in accordance with the provisions of the laws. Tax agents set the bad precedent for the taxpayers to follow. This will make self-assessment more difficult to implement.

   It was suggested may be IRB can assist in compiling a booklet embracing all the guidelines issued by the IRB. This will help taxpayers/tax agents to improve the quality of tax computation.

Response from Professional Bodies

Mr. Goh of MIA expressed great concern over the apparent unprofessional conduct of tax practitioners as mentioned by IRB. MIA is a statutory body set up to regulate the practice of the profession of accountancy in the country. Members who violate the code of ethics may be subject to disciplinary actions, and depending on the seriousness of the offence, may result in temporary suspension of their licences.

1) Currently, MIA members in practice, will quote appro number of their firms, and every authorised staf deemed to be signed on behalf of the firm. As for t agents who are not MIA members, the agents shall si on his name and quote his approval number. With rega to incorporated tax agents, not all the members of t board of directors of the incorporation are approved t agents. Authorised staff will sign in the name of t incorporation and quote the approval number of t incorporation. This may create some problems as t signatory may not be approved tax agents and there no personal liability. MIA will study the matter and p in the by-laws to regulate the members.

2) In respect of cessation and appointment as tax agent, MI agreed that the notification should be made to IRB a soon as possible. However, it must be stressed that und MIA by-laws, a professional clearance must be obtain prior to acceptance of appointment as new tax agen otherwise disciplinary actions will be taken. Where th taxpayer has dispute with the former tax agen professional clearance may not be obtained readily.

3) With regard to the apparent non-cooperation among t agents, it has pointed out that in many cases this is du to the taxpayers refused to pay the outstanding bil Under the MIA by-laws, the auditors/ tax agents wi have a lien on the books and document until the debts i fully discharged. On the other hand, tax agents who ar not MIA members may accept the appointment witho professional clearance, thereby causing the appearen non cooperation.

4) In so far as dissemination of information is co guidelines and circular sent to MIA will be circula all members in practice. In additions, MIA has also ta all steps to disseminate information through Contin Professional Development (CPD) progammes condu as far as practicable throughout the year. Obviously digression from professional conduct such as falsifica of claims is due to deliberate non-observance of cod ethics and MIA has a duty to rectify.

5) Being a statutory body, the disciplinary procedur prescribed by the laws. Therefore, it is hoped that IR lodged an official complaint to MIA against the erra members so that disciplinary actions can be initiated If the present by-law is found to be inadequate, MIA wi study and amend the by-law to tackle th misdemeanours.

Mr. Quah of MIT added that the problem may in part roote in economic causes. The economic boom in the last ten yea might have some effects on high staff turnover experienc by both sides. As a result some of the cases were overlooke due to change of staff or portfolio. MIT definitely want t remind our members of our shortcomings. As a national bod

of tax practitioners, MIT would certainly like to project its image as a creditable body whose members are persons of good character standings. It is suggested that may be IRB can write to MIT on the complaints so that MIT can circulate to the members and inform them on the importance and severity of the matter.

Mr. Veerinderjeet Singh of MIT noted that the problems partly due to the disparity of standards as shown by various types of practitioners. As a national body for tax practitioners, MIT is under obligations to conduct professional training to help members and to upgrade the standard of professional practice. As such MIT places a lot of emphasis on Continuing Professional Development (CPD). It was suggested that may the IRB can contribute in the training programme on certain issue. This will reflect the continuing cooperation between two parties and also provide a two-way communication channel between the IRB and the practitioners.

While professional organizations may and will enhance the dissemination of information, compliance is left to the individual member. The rules and regulations of MIT have in general encompasses the tax agents code of ethics. However, MIT is rather concern with the non-compliance by members and would like to work closely with IRB on this matter. There is a need for professional bodies to enforce the by-laws and recommended practices on a more reactive basis.

Mr Veerinderjeet Singh also suggested that whatever raised by the IRB should be put into writing and sent to the professional bodies so that it carries more weight when conveyed to the members.

Mr. Beh of MACPA said that MACPA is always concerned over the standards of tax practices. The Association also has its by-laws to govern the conduct of its members. It is hard to say whether the people involved in these practices are themselves given wrong information or they are not doing their jobs or whether they are even members of the professional bodies. Sometimes it is a matter of differing opinion that certain expenditures were qualifying expenditure and this can be ironed out and should not be considered as concealing facts or misrepresentations.

In the past, MACPA members have been following up with the IRB closely for the incentives claims to be approved. MACPA will want the members to ensure that the claims were well supported. Where IRB has raised queries and the answers provided by taxpayers are incomplete or not forthcoming, then MACPA agreed that the claims should be reduced or deferred or disallowed accordingly. It is not right for practitioners to insist for a provisional assessment allowing the claims pending examination and approval by the relevant authority. At the same time, tax practitioners would like to seek IRB agreement that as a general policy, claims submitted will be examine as soon as possible and will be allowed when they are found to be all right.

With regard to the proposal that IRB extend information of any defaulting members to the professional body, while it is useful, it may subject to the secrecy provisions of the ITA 1967.

DECISION

Puan Hasmah said that all these basic weaknesses might not have occurred should these cases were dealt with by the senior professional staff. IRB noted that of late the malpractice is quite rampant, particularly in Kuala Lumpur and Penang Branches. They felt that tax agents should not take advantage of the liberal approach adopted by them and abuse the trust placed on them. This is not only a matter of professional ethics but also moral obligations towards our country. PAC has recommended drastic measures, including introducing legal provisions to curb the malpractice.

In view of the issues raised, IRB has introduced the following measures:

1) No provisional assessment allowing incentive claimed will be issued until there is a clear evidence of approval of incentives.

2) Where there has been a clear breach of tax laws in computing tax liability, the branches were advised to write to the tax agents concerned about the misdemeanour and at the same time sent the duplicate to Bahagian Operasi. IRB shall take this into consideration in allowing renewal/ application for approved tax agent licence.

3) IRB will update the existing guidelines for tax computation, taking into account the suggestion by Mr. Harpal Singh to publish a book that contains all the guidelines issued by IRB.

4) All claimed submitted should be well supported

5) In the case of tax agents whose licence has expired, IRB will write to the taxpayers informing that the licence of their agents have expired and IRB will not entertain the representation by the tax agents.

6) With immediate effect, all tax agents must sign on the tax computations and quote their approval number, except for Companies cases.

The meeting ended with note of thanks to the Chair.

ARAHAN LEMBAGA HASIL DALAM NEGERI (LHDN) KEPADA MAJIKAN UNTUK MEMBERHENTIKAN POTONGAN CUKAI BERJADUAL (PCB)

This letter dated 24 December 1998 reproduced was addressed to the Malaysian Employers Federation. A copy of the letter was sent to the Institute by the IRB.

Dengan hormatnya saya merujuk kepada perkara di atas,

2. Sila maklum bahawa mulai 7.12.1998 LHDN telah mengeluarkan arahan kepada semua majikan secara berperingkat untuk memberhentikan potongan cukai di bawah PCB mulai Januari hingga Disember 1999 bagi kategori pekerja berikut .

   2.1 **Pekerja-pekerja di Semenanjung Malaysia yang mula bekerja pada dan selepas 1.1.1995.**

   Kategori pekerja ini telah sebenarnya membayar cukai di atas pendapatan tahun 1998 (untuk tahun taksiran 1999) melalui potongan PCB dalam tahun 1998,

   2.2 **Pekerja - pekerja di Sabah dan Sarawak, dan**

   2.3 **Pekerja - pekeja tempatan yang pertama kali bekerja dalam tahun 1999.**

3 Walau bagaimanapun, majikan akan dikehendaki terus membuat potongan cukai daripada saraan pekerja dalam keadaan - keadaan berikut:

   3.1 **Pekerja yang telah mula bekerja sebelum 1.1.1995.**

   Potongan cukai di bawah PCB dalam tahun 1999 adalah untuk menjelaskan cukai bagi tahun taksiran 1999 (atas pendapatan tahun 1998).

   3.2 **Pekerja (termasuk pekerja yang tidak dikenakan PCB dalam tahun 1999) yang mempunyai cukai pendapatan yang masih terhutang dan/atau tanggungan cukai di atas punca-punca tambahan seperti sewa dan lain-lain.**

   LHDN akan mengeluarkan arahan berasingan melalui borang CP38 untuk majikan membuat potongan cukai bagi menjelaskan cukai pekerja.

   3.3 Pekerja asing dan tidak bermastautin yang mula atau berhenti bekerja dalam tahun 1999.

4. Arahan kepada majikan dikeluarkan secara berasingan seperti berikut:

   4.1 Surat arahan kepada semua majikan swasta berserta senarai nama-nama pekerja yang dikenalpasti melalui sistem komputer sebagai pekerja yang telah mula bekerja selepas 1.1.1995. Salinan surat juga dihantar untuk makluman pekerja berkenaan.

   4.2 Surat arahan kepada majikan yang bukan kategori perenggan 4.1. di Semenanjung Malaysia.

   4.3 Surat arahan kepada majikan di Sabah dan Sarawak.

   4.4 Surat berasingan kepada pekerja (mula bekerja selepas 1.1.1995) yang tidak diketahui nombor rujukan majikan nya atau tidak mempunyai nombor rujukan majikan yang sah) untuk mengemukakan surat dari LHDN kepada majikan untuk memberhentikan PCB.

5. Walau bagaimanapun, adalah dijangkakan bahawa senarai pekerja yang dikeluarkan deh LHDN mungkin tidak lengkap/majikan mempunyai pekerja yang mula bekerja selepas 1.1.1995 tetapi tidak disenaraikan / tidak diberi senarai. Oleh yang demikian, majikan dan pekerja mereka dinasihatkan untuk menghubungi Cawangan LHDN yang berhampiran untuk penjelasan/arahan yang sewajar sekiranya mereka menghadapi sebarang kemusykilan berhubung dengan arahan di atas.

6. Untuk makluman tuan, pihak Perbendaharaan telah mengeluarkan soalan dan jawapan berhubung isu percukaian semasa melalui laman web tax@treasury.gov.my/.

Sekian, harap maklum.

Terima kasih.

"BERKHIDMAT UNTUK NEGARA"
"BERSAMA MENYUMBANG UNTUK PEMBANGUNAN NEGARA"

(HASMAH BINTI ABDULLAH)
Penolong Ketua Pengarah,
Bahagian Operasi,
b.p. Ketua Eksekutif/ Ketua Pengarah Hasil Dalam Negeri,
Lembaga Hasil Dalam Negeri,
MALAYSIA.

KENYATAAN AKHBAR MENGENAI PERLAKSANAAN SISTEM TAKSIRAN TAHUN SEMASA MULAI TAHUN 2000

(dikeluarkan oleh Menteri Kewangan)

LATAR BELAKANG

1. Sebagaimana yang telah diumumkan di dalam Belanjawan 1999 pada 23 Oktober yang lalu, Kerajaan akan memperkenalkan satu pembaharuan di dalam mentadbirkan cukai pendapatan iaitu memperkenalkan sistem taksiran tahun semasa bagi menggantikan sistem taksiran berasaskan tahun sebelumnya mulai tahun 2000. Ini bermakna pemakaian sistem taksiran berasaskan tahun sebelumnya akan berakhir dalam tahun 1999.

2. Pembaharuan ini dibuat kerana sistem taksiran tahun semasa mempunyai kelebihan tertentu iaitu cukai pendapatan akan dipungut beradasarkan keupayaan untuk membayar dan aliran tunai semasa bagi pembayar-pembayar cukai. Berbanding dengan sistem taksiran berasaskan tahun sebelumnya, cukai pendapatan hanya akan dipungut selepas lebih kurang setahun pendapatan tersebut diperolehi dan ini mengakibatkan masalah aliran tunai kepada pembayar cukai dalam tahun berikutnya apabila dia perlu membuat pembayaran cukai, terutamanya dalam keadaan kemelesetan ekonomi.

IMPLIKASI PERLAKSANAAN

3. Perlaksanaan pembaharuan ini melibatkan pengorbanan hasil kepada Kerajaan di mana cukai ke atas pendapatan yang diperolehi dalam tahun 1999 adalah dilepaskan daripada pembayaran cukai. Manakala kerugian dalam tahun 1999 pula dibenarkan untuk dibawa ke tahun berikutnya. Pelepasan cukai bagi pendapatan yang diperolehi dalam tahun 1999 adalah bertujuan semata-mata untuk meringankan bebanan pembayar cukai di peringkat peralihan kepada sistem baru. Ini kerana tanpa pelepasan cukai tersebut, cukai perlu dibayar bagi pendapatan yang diperolehi untuk dua tahun iaitu ke atas pendapatan bagi tahun 1999 dan juga bagi tahun 2000 apabila sistem baru dilaksanakan pada tahun 2000.

4. Sungguhpun pembaharuan ini akan memberi faedah kepada Kerajaan dan juga pembayar cukai, melalui maklumbalas dan persoalan-persoalan yang telah dikemukakan kepada Kementerian ini, ada kemungkinan besar terdapat pembayar-pembayar cukai yang akan cuba mengambil kesempatan untuk mengurangkan lagi pembayaran cukai dengan membuat perancangan cukai tertentu. Ini boleh dilakukan unpamanya dengan memaksimumkan jumlah pendapatan yang diperolehi dalam tahun 1999 memandangkan pendapatan berkenaan layak dilepaskan daripada pembayaran cukai pendapatan. Di samping itu, bagi syarikat yang menghadapi kerugian dalam tahun tersebut pula, ia berkemungkinan akan cuba memaksimumkan kerugian kerana kerugian berkenaan boleh dibawa ke tahun hadapan bagi maksud mengurangkan bebanan cukai pada masa hadapan. Di sini saya ingin mengambil kesempatan untuk menghindari tanggapan dan *tindakbalas negatif daripada pembayar-pembayar cukai* kepada hasrat murni Kerajaan yang telah bersedia mengorbankan cukai semata-mata untuk mengurangkan tanggungan cukai mereka. Seterusnya, saya ingin mengambil peluang untuk menerangkan isu-isu berkaitan secara terperinci seperti berikut:

(i) pendapatan dividen yang dikecualikan daripada cukai pendapatan adalah bagi dividen yang dibayar atau diagihkan daripada pendapatan yang diperolehi dalam tahun 1999 sahaja, iaitu setakat pendapatan yang telah dipersetujui untuk dilepaskan cukainya. Ini bermakna dividen yang diagihkan daripada pendapatan yang diperolehi dalam tahun-tahun selain dari tahun 1999 adalah masih tertakluk kepada pembayaran cukai pendapatan;

(ii) pendapatan daripada sumber-sumber di luar Malaysia yang diremit oleh individu pemastautin ke negara in dalam tahun 1999 adalah dikecualikan cukai;

(iii) bagi syarikat-syarikat yang menikmati galakan cukai seperti Taraf Perintis, tempoh Taraf Perintis yang bertindih dengan tempoh asas 1999 yang mana cukainya dilepaskan tidak akan dilanjutkan. Ini memandangkan kemudahan pelepasan cukai bagi pendapatan yang diperolehi dalam tahun 1999 adalah semata-mata untuk meringankan bebanan pembayar cukai sahaja;

(iv) pekerja tempatan yang mula bekerja dalam tahun 1999 akan dilepaskan daripada pembayaran cukai ke atas pendapatan yang diperolehi dalam tahun tersebut.

(v) Kementerian mengambil perhatian terdapat syarikat-syarikat di mana tahun kewangannya adalah tidak selaras dengan tahun kalendar. Bagi syarikat-syarikat seumpama, perlaksanaan sistem taksiran tahun semasa mulai tahun 2000 akan menimbulkan kesulitan walaupun pendapatan bagi tahun asas 1999 dilepaskan daripada cukai. Ini kerana mereka masih perlu membayar cukai untuk dua tahun dalam satu tahun berhubung dengan pendapatan yang

diperolehi dalam tempoh asas 2000, umpamanya bagi tempoh 1 Februari 1999 sehingga 31 Januari 2000 dan juga pendapatan yang diperolehi bagi tempoh 1 Februari 2000 sehingga 31 Januari 2001 dalam tahun 2000 juga. Selaras dengan asas untuk mengelakkan pembayaran cukai bagi dua tahun dalam satu tahun, syarikat-syarikat seumpama hanya dikehendaki memulakan pembayaran cukai bagi pendapatan yang diperolehi dalam tempoh 1 Februari 1999 sehingga 31 Januari 2000 mulai bulan Januari 2000 dan bukan mulai Februari 1999. Di samping itu syarikat berkenaan juga diberi masa sehingga akhir tahun 2001 untuk menjelaskan kesemua tanggungan cukai ke atas pendapatan yang diperolehi dalam tahun asas 2000.

(vi) borang nyata pendapatan bagi pendapatan yang diperolehi dalam tempoh asas 1999 masih perlu dikembalikan kepada Lembaga Hasil Dalam Negeri (LHDN) untuk tujuan menyimpan rekod pendapatan yang diperolehi oleh setiap pembayar cukai bagi setiap tahun. Ini akan membolehkan LHDN mempunyai rekod yang lengkap mengenai cukai terkorban kepada Kerajaan berhubung dengan cukai yang dilepaskan dan juga kerugian yang akan dibawa ke tahun hadapan berikutan perlaksanaan sistem baru ini; dan

(vii) perlaksanaan sistem taksiran tahun semasa adalah tidak terpakai kepada pembayar cukai yang tertakluk kepada Akta Cukai Pendapatan Petroleum 1967.

KESIMPULAN

5. Di dalam melaksanakan pembaharuan ini, Kerajaan tel mengambil langkah-langkah untuk mengelakk bebanan kepada pembayar cukai supaya pembaharu ini mendatangkan manfaat kepada negara dan ju pembayar cukai itu sendiri. Kerajaan berharap pemba cukai tidak akan cuba mengambil kesempatan unt memaksimumkan manfaat yang boleh diperolehi mela perancangan cukai tertentu. Dalam hubungan i Kementerian Kewangan dan LHDN akan mengamb langkah menyediakan peruntukan undang-undang ba mengelakkan kes-kes pengelakan cukai (tax avoidan oleh pembayar-pembayar cukai. Di samping itu, LHD juga akan membuat penelitian lanjut ke atas kes-k pembayar cukai yang ada menunjukkan ciri-c penyalahgunaan seperti memaksimumkan pendapat atau kerugian bagi tahun 1999 dengan membu perbandingan kepada pendapatan yang telah diperol dalam tahun-tahun lepas supaya amalan yang negatif i dapat dibanteras.

6. Kementerian Kewangan telahpun menyediakan form soalan dan jawapan yag berkaitan dengan perlaksana sistem taksiran tahun semasa untuk pengetahu pembayar cukai secara umumnya. Soal jawab dalam ve bahasa Malaysia dan Inggeris akan disiarkan di lama Perbendaharaan menggunakan alamat *http www.treasury.gov.my/*.

MEMBERSHIP OF MIT AS AT 23 NOVEMBER 1998

The following persons have been admitted as associate members of the Institute as at 23 November 1998

Name	Membership No.
Ong Chee Seng	1528
Tan Chee Seng	1529
Vong Chiang Zu	1530
Tong Siew Choo	1531
Onn Hock Chye	1532
Bahudin Bin Mansor	1533
K. Sandra Segaran A/L Karuppiah	1534
Mohd Noh Bin Jidin	1535

MEMBERSHIP STATUS OF MIT AS AT 23 NOVEMBER 1998

Honorary Fellows	7
Fellows Members*	341
Associate Members*	1178
	1519
*** Fellow and Associate Members**	
Public Accountants of MIA	896
Registered Accountants of MIA	176
Licensed Accountants of MIA	16
Advanced Course Exam of IRD	120
Advocates & Solicitors	7
Approved Tax Agents	125
MIT Graduates	2
Others	177
	1519

CURRENT YEAR ASSESSMENT SYSTEM

(Frequently Asked Questions)

Question:
What is meant by "current year assessment system"?

Answer:
Under the current year assessment system, income derived in the current year will be assessed and liable to tax in the same year. In the 1999 Budget, it is proposed that the current year assessment system be implemented with effect from the year 2000. With this change, it would mean that income derived in the year 2000 will be assessed to tax in the same year.

Question:
What is the difference between "current year assessment" and "preceding year assessment"?

Answer:
The difference between "current year assessment" and "preceding year assessment" is as follows:

"Current year assessment" means income derived in a current year will be assessed and liable to tax in the same year.

"Preceding year assessment" means income tax charged for a particular year is based on income that has been derived in the preceding year.

We are presently under the "preceding year assessment" system. As such, income derived in 1998 will be assessable in the year 1999 (year of assessment 1999).

Question:
What are the benefits under the "current year assessment system"?

Answer:
The benefit arising from a current year system is that tax will be assessed and collected on income derived in the same year. As such, the tax will be collected based on the ability (to pay) and the current cash flow position of the taxpayer. However, under the preceding year assessment basis, tax is collected about a year after the income arises and this has resulted in cash flow problems to the taxpayers in the following year when they have to settle their taxes, particularly in time of recession or economic downturn.

Question:
How does Lembaga Hasil Dalam Negeri (LHDN) collect taxes from taxpayers?

Answer:
The method of payment of income tax is determined following the categories of taxpayers. Taxpayers can generally be categorised into:

(i) Employees (individuals only);

(ii) Business (individuals and companies); and

(iii) Others including cooperatives, associations, Trusts and deceased estates.

Employees

This category of taxpayers are subject to the Schedular Tax Deduction (STD). Under the STD, tax is deducted by the employer from the salaries of the employees based on a schedule as provided by LHDN.

Business

The business group comprises individuals (sole proprietors and partners) and companies. This category of taxpayers is subject to the installment payment scheme. Under the present arrangement, tax payers are allowed five (5) bimonthly installments (January, March, May, July and September or February, April, June, August and October).

Others

Same as the business group as mentioned above.

Question:
What is meant by the "Schedular Tax Deduction" (STD)?

Answer:
The Schedular Tax Deduction (STD) is a collection scheme whereby it is obligatory for each employer to deduct from the salary of each of his employee following a schedule as determined by LHDN for payment of income tax of the employees. The sample of the schedule is attached as Appendix I.

Presently, there are 3 categories of employees who are subject to STD:

(i) Employees who commenced employment before 1 January 1995;

(ii) Employees who commenced employment after 1 January 1995; and

(iii) Employees in Sabah and Sarawak.

(i) Category (i)

For employees commencing employment prior to 1 January 1995, tax deduction is in respect of income derived from the preceding year.

(ii) Category (ii) dan (iii)

For employees commencing employment after 1 January 1995 and employees in Sabah and Sarawak, tax deduction is for the income derived in the current year.

Question:
What are the implications on taxpayers arising from the implementation of the current year assessment system in year 2000?

Answer:
With the implementation of the "current year assessment" system in year 2000, taxpayers will have to pay tax in the year 2000 based on the income derived in the year 2000. However, as the assessment in year 1999 is still based on the preceding year basis, income for 1999 will be assessable to tax in year 2000 and payemnt has to be made in that year too. This means that the taxpayer would have to pay income tax for 2 years in the year 2000.

Question:
How would the Government relieve the burden on the taxpayers having to pay tax for two years in one year as a result of the change to the current year assessment?

Answer:
To relieve the burden on taxpayers from payment of income tax for 2 years in one year, the Government proposed to waive income tax on the 1999 income. This means that in the year 2000, tax will not be charged on income for the basis period 1999. Tax that needs to be paid in year 2000 is based on income derived in the year 2000 only.

Even though income for basis year 1999 is waived from income tax, taxpayers are required to declare their income for the said year in the Return Form for Year of Assessment 2000.

Question:
What are the types of income that are chargeable to tax?

Answer:
Income chargeable to tax following the provisions of the Income Tax Act, 1967 are as follows:

(a) Employment income;

(b) Business income

(c) Dividends, interest and discounts;

(d) Rents, royalties and premiums;

(e) Pension, annuities and other periodical payments; and

(f) Other income not falling under any of the above.

Under section 3 of the Income Tax Act 1967, remittances received by residents, other than companies, from outside Malaysia are chargeable to tax.

Question:
What is meant by income for 1999 being waived from income tax?

Answer:
Income for 1999 which is to be waived from income tax is in respect of all income as stated under the answer for the question No. 8 above derived from basis period 1999, except for dividend income. However Income derived by foreign employees and non-resident individuals who commence or terminated their employment in Malaysia in the year 1999 will be subject to tax.

Income derived in the basis year 1999 means income arising and does not necessarily mean income received in the basis period 1999. Income received in the basis period 1999 but relates to employment or business transactions in the basis period 1998 or prior years will be subject to tax in the year the income arises and will therefore not be waived from income tax. For example, compensation received in year 1999 for cessation of employment which took place in 1998 will be considered as income for 1998 and not as income for 1999.

Question:
What are the implications from the waiver of tax on taxpayers?

Answer:
The assessment and payment positions for each category of taxpayers resulting from the tax waiver on income derived from basis year 1999 are as follows:-

(a) Employees

Based on 3 categories of employees who are subject to STD:

(i) Employees who commenced employment before 1 January 1995;

(ii) *Employees who commenced employment after 1 January 1995; and*
(iii) *Employees in Sabah and Sarawak.*

Category (i)

For employees under this category, deductions under STD will continue in the year 1999 for payment of tax on 1998 income. Employees are required to declare their 1998 income in the Return Form for Year of Assessment 1999 which will be issued in the early part of 1999, to be assessed for the Year of Assessment 1999. They will not be taxed on income arising in the year 1999 in year 2000. Begining from year 2000, they will pay tax based on current year income (year 2000).

Category (ii) and (iii)

For employees under these categories, they are exempted from deduction of tax under STD in the year 1999 because they have already paid tax on their 1998 income through STD in the year 1998. However, such employees are still required to declare their income for 1998 by submitting Return Form for Year of Assessment 1999 to determine their actual tax liability. STD will recommence in respect of these categories in the year 2000.

(b) *Business*

(c) *Others (co-operative, associations, trusts, deceased estates)*

For categories (b) and (c) above, they will continue to pay income tax through the installment scheme as arranged for in 1999 on the income for basis period 1998. They are required to declare income for basis period 1998 for the Year of Assessment 1999. These categories will continue to pay tax in year 2000 but on current year income.

These groups of taxpayers will also not be assessed on income for basis period 1999 in the year 2000. However, they will be required to complete Return Form for Year of Assessment 2000 which will be issued in 2000, for declaration of business profits/ losses for basis period 1999, to enable the claim for losses to be carried forward to be determined.

Question:
How is the tax treatment on non-residents as a result of the implementation of "current year assessment" system?

Answer:
Presently taxpayers who are non-residents are assessed as follows:-

(i) ***Income Tax***

Taxpayer	*Rate of tax (%)*
Individuals	*30% of chargeable income*
Companies	*28% of chargeable income*

(ii) ***Withholding Tax***

Types of Income	*Withholding Tax Rate (%)*	
Interest	*15% on gross income*	*Final Tax*
Technical Fees	*10% on gross income*	*Final Tax*
Royalties	*10% on gross income*	*Final Tax*
Income of foreign	*15% on gross income*	*Final Tax*
public entertainers		
Contract Payments	*15% on contract payment* *5% on contract payment for non-resident employees*	*Not a Final Tax*

Non-resident taxpayers are also presently subject to assessment on a preceding year basis and payment of tax for 2 years in one year will also arise in year 2000. Generally the non-resident taxpayers are also waived from tax on income derived in year 1999. However, non-resident individuals who commence employment in 1999 will be assessed to tax on the 1999 income.

In respect of withholding taxes, the payers in making payments to non-residents are required to withhold and remit to LHDN, tax of the non-residents on specific income and at rates specified. The tax waiver on 1999 income will not be applicable to non-residents receiving income which is subject to withholding tax and considered as a final tax.

On the other hand, withholding tax on the service portion of contract payments is provided as a collection mechanism to ensure compliance of the non-residents to submit Return Forms and to settle their tax liability which will only be determined in the following year. Thus, such withholding tax on the non-resident contractors are not final tax and the non-resident contractors will be given the waiver in respect of income derived in basis period 1999. However, withholding tax will still apply to ensure tax compliance of the non-resident contractors.

Question:
Will the implementation of the "current year assessment" system affect the Government's cash flow?

Answer:
The implementation of the "current year assessment" system will enable tax on income derived by the taxpayer in a particular year to be collected in the same year too. This means that the Government's cash flow will not be affected by the implementation of current year assessment system but the cash flow will reflect the current economic performance.

Question:
What are the categories of taxpayers which will not be granted the tax waiver on year 1999 income?

Answer:
The change from the "preceding year assessment" to "current year assessment" system involves the assessment system under the Income Tax Act 1967 and the waiver of tax on basis period 1999 income is given to avoid taxpayers having to pay two (2) years taxes in one year. The categories of tax payers ***not*** *given the waiver are as follows:-*

(i) foreign employees and non-resident individuals who commence or terminate their employment in year 1999; and

(ii) taxpayers subject to withholding tax where it is a final tax.

Question:
Is "current year assessment" system applicable for the Petroleum Income Tax Act 1967?

Answer:
Current year assessment system is not applicable to the Petroleum Income Tax Act 1967. This decision is taken in view of the need for the Government to maximise tax revenue from the upstream petroleum industry which is exploiting the most important natural resource of the country that would be depleted after a period of time. Furthermore, the income tax element has been taken into consideration in the profit sharing contracts of this industry.

Question:
What is the tax treatment on dividends with the implementation of the "current year assessment" system?

Answer:
With the implementation of the "current year assessment" system, any dividends distributed out of income from basis period 1999 will be exempted in the hands of the recipients (shareholders). For this purpose, companies are required to keep a separate account for income derived in the basis period 1999, which would be waived from the income tax.

Question:
What is the effect of the implementation of the "current year assessment" system on companies enjoying incentives under pioneer status?

Answer:
If the period of exemption under Pioneer Status overlaps with the basis period 1999 where the tax is being waived, the Government will not extend the relevant pioneer period.

Question:
How is the tax treatment of companies whose financial year is not the same as the calendar year?

Answer:

This Ministry takes note that there are companies whose financial year is not the same as the calendar year. For these companies, the implementation of the current year assessment system beginning from the year 2000 will subject them to financial difficulty even though income derived for the basis period 1999 is waived from tax. This is because they are still subject to payment of two-year tax in one year. For example, for a company having a financial year from 1 February to 31 January would have to pay tax on income derived during the period 1 February 1999 to 31 January 2000 as well as 1 February 2000 to 31 January 2001 in the year 2000. In line with the objective to avoid the payment of income tax for two years in one year, those companies are required to start making tax payment in the month of January 2000 instead of February 1999 on income derived for the period 1 February 1999 to 31 January 2000. At the same time, those companies will also be allowed to settle their tax on income derived in the basis period 2000 until the end of 20001.

If further clarifications are needed regarding the implementation of the "current year assessment" system please contact the Ministry of Finance (MOF) and Lembaga Hasil Dalam Dalam Negeri (LHDN).

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Note:
The above 'Frequently Asked Questions' have been reproduced from the Ministry of Finance's homepage. Readers may refer to it at http://www.treasury.gov.my

MIT HOSTS AOTCA MEETINGS

AOTCA meetings in progress

President of AOTCA, Mr David Russell delivering his speech during AOTCA official Dinner.

The Institute had successfully hosted the Sixth General Council Meeting and Third Regular General Meeting of the Asia-Oceania Tax Consultants' Association (AOTCA) from 12 to 14 November 1998 at Shangri-La Hotel, Kuala Lumpur.

AOTCA consist of 12 member bodies, which includes the Institute of Certified Public Accountants of Singapore which was newly accepted as a member body during the meetings. There were close to 60 delegates from almost all member bodies who attended the meetings which were held for two days.

The following are the member bodies of the AOTCA:

Taxation Institute of Australia

All Pakistan Tax Bar Association

Australia Society of Certified Public Accountants

Institute of Certified Public Accountants of Singapore

Institute of Chartered Accountants in Australia

Japan Federation of Certified Public Tax Accountants Association

Japan Tax Research Institute

Korea Association of Certified Public Tax Accountants

Tax-Accountancy Association of Republic of China

Taxation Institute of Australia

Taxation Institute of Hong Kong

The Tax Management Association of Philippines

Listening attentively at the meeting... (from left) Mr Kang Beng Hoe and En Ahmad Mustapha Ghazali representing MIT, Mr Rehan Hasan Naqvi and Mr Abdul Qadir Memon representing All Pakistan Tax Bar Association.

Council Members En Hamzah HM Saman (far left), Tn Hj Abdul Hamid (2nd from left) with some delegates from Korea during Welcome Dinner hosted by MIT.

These two days were filled with meetings and seminars. On the first day morning was the AOTCA General Council Meeting. After the lunch break was a presentation on "Current Investment Environment and Incentives for Foreign Investors in Malaysia" by En Ahmad Tajuddin, Assistant Director of Promotion Division from Malaysian Industrial Development Authority (MIDA). This was followed by a talk on "Malaysia's Recent Capital Control and Other Economic Measures" by Mr Chew Theam Hock, Director of Tax from KPMG Peat Marwick. Both seminars had a Question & Answer Session after the presentation, which gave an opportunity to the delegates to raise their views and enquiries.

On the second day, the morning session was the Regular General Meeting of the AOTCA. Among the matters discussed and decided during this meeting were to postpone the 1st Convention of the AOTCA to the year 2001 and the MIT will still be given the privilege to host the Convention. In the afternoon, there was an open forum seminar presented by speakers from Hong Kong, Japan, Korea and Taiwan on "Asian Economic Crisis - Our Country's Fiscal and Economic Response" which was followed by a Question & Answer Session.

Simultaneous Interpretation System was also made available

Mr Cheng Yung-Yang from Taiwan Tax-Accouontancy Republic of China presenting during open forum seminar.

for members who were unable to follow the meetings and seminars which were conducted in English.

While delegates were attending meetings, the accompanying persons were kept occupied with a countryside tour along the outskirts of the Kuala Lumpur city as well as a shopping tour that covers four large shopping complexes in the city.

The Institute also hosted a Welcome Dinner on 12 November 1998 for the delegates, invited guests as well as their spouses. The President, En Ahmad Mustapha Ghazali, in his speech addressed the issue of our current fiscal policies i.e. the implementation of self-assessment tax system whereby he emphasised that the Institute hopes to learn and seek guidance from the member bodies whose countries have already implemented the system.

The President of the AOTCA, Mr David Russell who gave his speech in Bahasa Malaysia, expressed his appreciation to MIT for hosting the meetings in Kuala Lumpur in spite of the current economic crisis.

On the second day, the AOTCA hosted an Official Dinner for the delegates and their spouses. This was followed by an official tour to our historical city of Melaka on the next day.

The Institute hopes that all foreign delegates would have brought home fond memories of our country and hospitality and that they would come back in the year 2001 with more friends and collegues for the 1st Convention of the AOTCA in Kuala Lumpur. The Institute also welcomes all members here to participate in the first ever Convention of the AOTCA in the year 2001.

INTENSIVE REVISION COURSE FOR MIT EXAMINATION

Once again the Institute had organised for the registered students an Intensive Revision Course in preparation for the December 1998 MIT Examination for Taxation I to V papers.

This revision course was conducted by Ms Ong Yoke Yew for Tax I, II, III and V papers while Mr Ho Juan Keng conducted classes for the Tax IV paper. Both of them have many years of experience in training and lecturing in the subject of Malaysian Taxation.

The revision course focused on the complete syllabus of the papers and many difficult aspects, which are significant to the examination. Emphasis was also placed on examination techniques.

This course was held at the MIA premises. The response from the students was very encouraging. They attended classes from 9.00a.m. to 5.00p.m for 2 days for each papers. The materials for the revision course was given earlier to the students to enable the students to be prepared before attending the revision course. In addition to that, the course leaders had also given out additional materials as well as Questions and Answers, which is expected to assist students in preparation for their examination.

As a whole, the course received positive response from the students and this was shown clearly with the students coming from as far as Johor, Penang and Perak. The Institute hopes to conduct similar courses for the benefit of its students in the coming years. The Institute, upon request by many students, also plans to conduct the revision course much earlier from next year onwards.

The Institute would like to take this opportunity to wish success and best of luck to all students who are sitting for 1998 MIT Examinations which will be held from 14 to 18 December throughout Malaysia.

YOUR SUCCESS IS OUR ACHIEVEMENT!!!!!

Student during one of the sessions of the Intensive Revision Course.

MIT
Professional Examination
Calender For 1999

January 1	Annual Subscription for 1999 payable.
February 14	Release of the 1998 Examination results. Students will be notified by post. No telephone enquiries will be entertained.
March 31	Last date for payment of annual subscription fee for 1999 without penalty (RM50)
April 30	Last date for payment of annual subscription for 1999 with penalty (RM100). Students who fail to pay will be transferred to the inactive file.
May 31	Question & Answer Booklets available for distribution.
September 1	Closing date of registration of new students who wish to sit for the December 1999 examination sitting.
September 15	Examination Entry Forms will be posted to all registered students.
October 15	Closing date for submission of Examination Entry Forms. Students have to return the Examination Entry Form together with the relevant payments to the Examinations Department, before 15 October 1999.
November 30	Despatch of Examination Notification Letter.
December *(dates to be confirmed)*	MIT Examinations

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Malaysian Institute of Taxation

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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.

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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.
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7. Any person who is authorised under sub-section (2)/(6) of Section 8 of the Companies Act, 1965 to act as an approved company auditor without limitations or conditions.
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9. Any person who is an approved Tax Agent under Section 153 of the Income Tax Act, 1967.

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