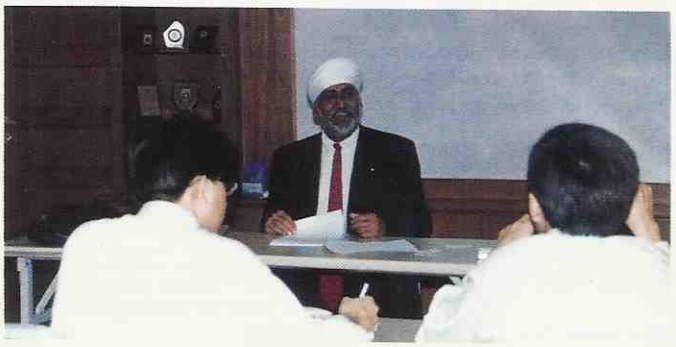

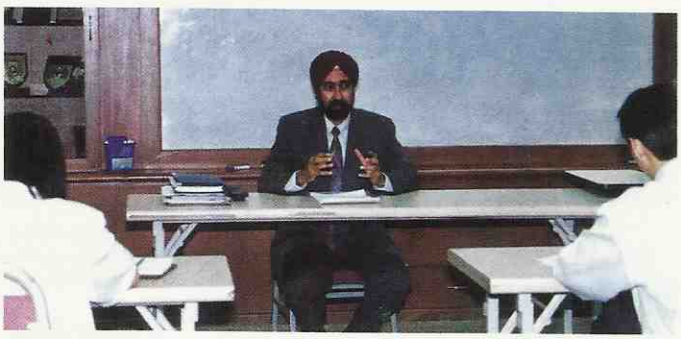

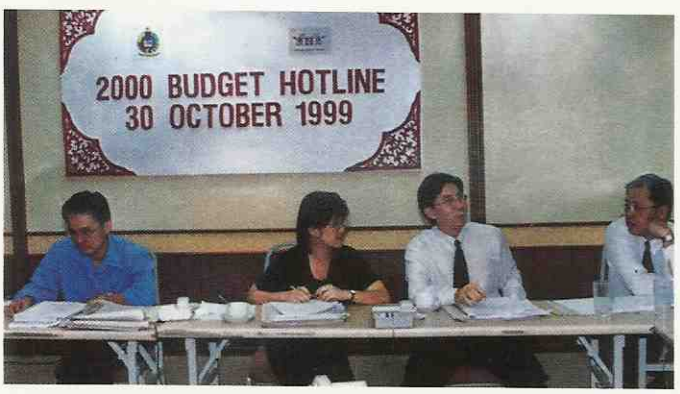

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Malaysian Institute of Taxation

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 objective 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.
4. To provide examination for persons interested in or concerned with the taxation profession.

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Contents

Malaysian Tax System In The Year 2000 And Beyond

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Asia-Oceanic Tax Consultants Association (AOTCA) Meeting
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1. Background

A good tax system requires an effective tax administration managed by competent personnel. A well designed tax system which is poorly administered can become an instrument of injustice. On the other hand, an effective and well managed administration can offset the weaknesses of a poorly designed tax system.

The introduction of a rudimentary tax system in the Malay States (as it was then known) could be traced back to 1910 when indirect tax was imposed on main economic units (Bardai, 1993). The Malaysian income tax system, however, was (originally) drafted by R.B. Heasman - author of the Income Tax Report, in 1946. From the comprehensive draft bill came the Income Tax Ordinance 1947, effective from 1 January 1948. The early draft of the legislation was based substantially on the United Kingdom Colonial Territories Income Tax Ordinance 1922 which was designed for the British colonies at that time. The tax laws of a number of Commonwealth countries such as India and Burma (currently Myanmar) were initially based on this model legislation. The Income Tax Ordinance, 1947 was subsequently repealed and replaced by the Income Act 1967 (hereafter ITA) which came into effect on 1 January 1968.

2. Assessment System for the Millenium

Malaysia has been adopting the official assessment system (OAS) since 1947 and under such a system, taxpayers are assessed by the revenue authorities based on the tax returns filed by them. The Inland Revenue Board (IRB) would. however, be implementing a self assessment system (SAS) in stages commencing from the year 2001 with companies. The new assessment system would, however, be applicable to businesses, partnerships mid cooperatives in 2003 followed by salaried individuals in the year 2004. The move towards SAS generally reflects a re-thinking by Malaysian policy makers of ways to overcome current problems facing tax administrators. For instance, the rate of non-submission of income tax returns is in the region of about 20 percent of total returns issued (Rahim 1997). There is now an increased requirement to meet specified deadlines-demands upon revenue systems to produce and update tax information in a world of changing technological environment and borderless transactions.

Under SAS, the revenue authorities will accept information contained in a tax return as the basis for

computing tax liability. Such a move would expedite the processing of tax returns considerably. To safeguard the assessment system against abuse, the IRB will audit some taxpayers at random, and if they we found to have given inaccurate information on their returns, they will be subject to varying penalties, depending on the nature of the offence. A significant feature of SAS is the reduced time lag between lodgement of tax returns and the finalisation of a case.

Revenue for the Government

Government authorities generally impose two broad types of taxes, namely direct and indirect taxes. In Malaysia, the responsibility to administer direct taxation lies with the Director General of Inland Revenue (DGIR) while indirect taxation is administered by the Director General of the Royal Customs and Excise Department.

Tax revenue is a main source of income for the government of Malaysia as the country renewed its economic growth after the 1997/98 economic crisis. In 1998, 50.6 percent (1997: 46.4 percent) of the total Federal Government revenue was from direct taxes and the remainder was from indirect taxes, 27.8 percent (1997: 35.3 percent) and non-tax revenues 21.6 percent (1997: 18.3 percent) (Table 1). Examples of non-tax revenues include royalties from petroleum sector, collections from licenses, permits, road tax and registration fees.

Table 1

Federal Government Revenue (1998)

	RM (Million)	%
Direct Taxes	27,861	50.6
Indirect Taxes	15,307	27.8
Non-Tax Revenues	11,884	21.6
Total Revenue	55,054	100.0

Source:
Bank Negara Malaysia Annual Report (1998)

Direct Taxes

It is interesting to note that personal income tax is the second largest source of direct taxes in Malaysia, following corporate tax. In 1998, corporate income tax was 57.4 percent of total direct taxes followed by personal income tax (2 1. 8 percent) (Table 2).

Table 2

Source of Direct Taxes (1998)

	RM (Million)	%
Corporate Tax	15,997	57.4
Personal Income Tax	6,082	21.8
Petroleum Income Tax	4,028	14.5
Other Direct Taxes	1,756	6.3
Total Direct Taxes	27,863	100.0

Source:
Bank Negara Malaysia Annual Report (1998)

Personal income tax in Malaysia is imposed on individuals either employed in their personal capacity or as individuals operating business as sole-proprietors and also as partners in my partnership. Examples of other direct taxes include stamp duty, real property gains tax and revenue from International Offshore Financial Centre (IOFC).

Table 3

Trend in Revenue Collection *from Direct Taxes** (1990-1998)

	Billion (Ringgit)	
Year	Nominal	Real** (1990:100)
1990	10.4	10.4
1991	13.2	12.9
1992	15.4	14.4
1993	17.1	15.5
1994	20.2	17.7
1995	22.7	19.3
1996	25.8	21.3
1997	30.5	24.6
1998	27.9	21.6

Source:
IRB Annual Reports (1990-1998)
**Consumer Price Index (See Appendix 1).

Direct taxes collected in 1998 amounted to 27.9 billion Malaysian ringgit (hereafter "RM") compared to RM30.5 billion in 1997, which is a decrease of 8.5 percent (Table 3). In real terms, however, the decrease was only 8.4 percent. That amount (27.9 billion), accounts for newly 50.6 percent of the Federal Government revenue for 1998. This illustrates the importance of direct taxes to the Government coffers.

Scope of Charge

The basis of income taxation in Malaysia is the derived scope. Income is only assessed if it is derived in Malaysia or remitted to Malaysia from overseas. However, income that is remitted to Malaysia by a non-resident is wholly exempt. Only income of a non-resident that is derived from Malaysia is subject to tax. Foreign

sourced income received by resident companies in Malaysia (except banks, insurance. sea and air transport companies) are, however, exempted. Banking institutions, insurance, sea and air transport companies we taxed on a world income basis.

The general operations of IRB in Malaysia are highly decentralised. The Director General of the IRB exercises his advisory and supervisory function from the Head Office located at Kuala Lumpur. The operational functions of issuing, obtaining and examining annual returns; tracing new taxpayers; computing the tax payable and issuing notice of assessments devolve on the staff in the branches. Currently, there are 34 branches in West Malaysia and another 10 branches in East Malaysia and these branches located in major towns enforce the provisions of the Income Tax Act, 1967 (as revised).

The assessment functions of the IRB we subdivided into the following three categories:

(i) Assessment based on returns submitted without my queries.

(ii) Assessment made after some form of field or desk audit. Written queries are made and taxpayers we expected to respond in writing before assessments are raised and reviewed.

(iii) Investigation of cases on a selective basis.

Most branches have an investigation mid intelligence centre and they are staffed by at least 7-20 senior officials, depending on the size of branches and the concentration or density of taxpayers. The size of investigation centres we expected to grow with the expansion of audit programmes. The collection function, however is centralised.

- **Indirect Taxes**
  Trend in Malaysian Indirect Tax System

Developing countries relied heavily on indirect taxes for convenient tax revenue generation in the early stages of their tax system (Musgrave. 1987). This trend applied too in the case of Malaysia. For instance, indirect taxes accounted for 78.4 percent of the total Federal Tax Revenue in 1960 (Table 4).

Table 4
Indirect Taxes as percentage of Federal Tax Revenue

Year	Export Duties	Import Duties & Surtax	Excise Tax	Sales Tax	Other Indirect Tax	Total Indirect Tax
1960	29.2	40.0	0.9	-	6.4	78.4
1970	14.0	27.9	12.5	-	10.6	65.0
1980	20.2	15.9	7.6	5.4	6.6	55.7
1985	10.0	14.9	8.3	7.4	7.8	48.4
1988	10.1	17.4	11.3	7.9	4.2	50.9
1991	8.3	16.2	11.1	9.8	3.3	48.7
1993	4.6	14.3	11.6	10.9	5.1	46.5
1995	2.0	13.5	12.7	11.7	5.6	45.5
1996	2.2	14.9	13.9	13.1	7.1	51.2
1997	2.0	15.0	146.0	14.5	7.6	53.7
1998	1.5	9.4	7.3	8.8	8.6	35.6

Source:
Department of Customs & Excise, Malaysia, Annual Reports, Various Issues.

The fast expansion in indirect taxes was primarily due to the significant role played by traditional taxes such as Import Surtax and Rubber Export Surcharge introduced at that time. The relative importance of indirect taxes has, however, steadily declined over the years. For example, from 65 percent in 1970 to 55.7 percent in 1980 and to 48.4 percent in 1985. In 1998, the proportion of indirect tax to Federal Tax Revenue fell sharply to 35.6 percent compared to the previous year. In that year, there was severe contraction in domestic demand and lower petroleum prices in almost all major categories of indirect taxes. Most categories of indirect taxes registered double digit (percentage) declines (BNM, 1998).

4. Taxation for the Millenium

Charting the course for future tax direction has never been easy. And in the case of Malaysia, this task is further exacerbated where constant development and innovation is in progress. The Malaysian economy continued to strengthen in 1997 with a growth rate of 7.9 percent but took m unfavourable rum in 1998 with a negative growth of 6.7 percent in 1998 after 12 years of uninterrupted expansion averaging 7.8 percent. Malaysia is, however, expected to register a growth of about four percent in 1999. Per capita income in nominal terms declined to RM1 1,835 (US$3,018) in 1998 from RM12,051 in 1997 in 1997 (US$4,284) (BNM 1998). Basking in the knowledge of its overall success between the years 1988 to 1999 (with the exception of 1998),

Malaysia is on an able footing to achieve the distant vision of becoming m industrialized nation by the year 2020. By that yew, the Malaysian tax system too would have undergone tremendous changes. This section will attempt to broadly outline the possible changes that might occur to the Malaysian tax system. This furtive endeavour is based on observations of changing trends within the tax system. development of information technology, complemented with global influences on the tax system. Transformation within the tax system will be discussed specifically on the following areas:

- New assessment era
- Impact of new technology
- Audit activities and self assessment
- Revision of tax rates
- A Case for Consumption Based Tax
- Environment taxes
- Electronic commerce
- Tax on financial instruments
- International influence

4.1. New assessment era

The Inland Revenue Department became a Statutory Board on 1 Much 1996 and has since been known as the Inland Revenue Board (IRB). The main aims of such a conversion were two-fold. First, it would give the Inland Revenue Board more autonomy and flexibility of operation, especially in financial and personnel matters. Secondly, it would improve the quality and effectiveness of tax administration in Malaysia. The IRB is now headed by an executive chairman. It comprises of tow representatives from the Government, including the secretary-general to the Treasury. The functions of the board will include acting m the Government's agent and providing services in administering, assessing, collecting and enforcing payment of income tax, real property gains tax, petroleum income tax and stamp duties. An interesting feature of the Board is that income tax funds could be invested in bonds and financial instruments. This is allowed under amendments to the Inland Revenue Board of Malaysia Act 1994.

As mentioned earlier, an important aspect of the changes to the proposed tax administration relates to the self assessment system. Once the SAS is implemented, there will be a significant shift in focus away from routine assessing work to more critical and strategic areas such as audit, investigation and taxpayer service. A self assessment system is. to all intents and purposes, a privatisation of the process of tax computations. Hence, the SAS will only work effectively with the assistance and the co-operation of tax agents.

With the introduction of the Income Tax (Amendment) Bill 1999 in April this yew, there will be significant changes in the manner in which income would be assessed. As from the yew 2000, the basis yew mid the yew of assessment would be the same calendar yea. For example, the basis yew for year of assessment 2000 is 1 January 2000 to 31 December 2000. Therefore, income earned in the yew 2000 would be assessed on a current yew basis and not on a preceding year basis.

4.2 Impact of new technology

Several countries are moving towards a technological revolution and it has far reaching implications for tax administrators. The use of latest information technology is an advantage to the Revenue authorities as it would speed up the process of data collection and minimise the incidence of errors. For example, computers have demonstrated substantial capacity in processing information in returns filed by employers and to match this information against annual returns filed by individual taxpayers. This helps ensure collection of direct taxes on a greater portion of the revenue base. As for now, the IRB does not posses the full capacity to access all information that it could from mutual returns. With the implementation of a self assessment system (SAS), IRB is expected to place greater emphasis on enhanced integrated computerization programme.

The SAS has been introduced by several countries and they include Australia 1986/87), New Zealand (1988) and United Kingdom (1996/97). In these countries, the self assessed returns can be electronically lodged to their respective tax authorities resulting in swift finalisation of cases with minimal error. As for Malaysia, the introduction of SAS could result in

the refocusing of branch office task through a centralized processing programme. As a result, important benefits would accrue in supporting the tax authority in becoming less processing-oriented but become aligned to more client-service that could foster greater levels of compliance. In essence, the establishment of a centralised processing unit would: (i) hasten the processing of returns while minimising errors (ii) assist in monitoring levels of understatement of income among various sectors/industries; (iii) oversee default in tax payments andtaking measures to recover debts; (iv) set-up m effective taxpayer audit environment mid, (v) result in m overall reduction of administrative costs.

4.3 Audit activities and self assessment

A principle objective of m audit programme in a SAS is to encourage voluntary compliance with income tax laws by detecting and bringing into account those who do not pay the correct amount of tax. The success of the SAS, therefore, depends on the system of a balanced mid systematic tax audit. Past experience from countries such as Australia, New Zealand, and Singapore and the Unite Kingdom that have already introduced SAS suggest that the starting point in m audit process involves the application of high speed computers to enlist critical cases that meet the audit criteria predetermined by the tax authorities. Audit officials would then routinely examine the tax returns that have been identified by the computer earlier to confirm its accuracy.

Tax audits are time consuming and costly, but as mentioned earlier, its existence would increase greater compliance among taxpayers. A shift towards a SAS would entail several officers who we currently involved in the routine assessment programme to be retrained and deployed to carry out more skilful audit tasks.

4.4 Revision of Tax Rates

Prior to 1985, the tax rates in Malaysia for resident individuals ranged from six per cent to 55 per cent. Supplementary taxes like development tax, and excess profits tax were five per cent. This raised the marginal tax rate for some individuals up to 65 per cent. A significant change in the personal income tax rate structure took place in 1985. The graduated rates were reduced substantially from five per cent to 40 per cent for the year 1985. The supplementary taxes remained unchanged. The income tax rates were further revised in 1991, that is from four per cent to 35 per cent and in 1991 from two per cent to 34 per cent. Supplementary taxes were completely abolished by 1993. This downward trend has continued progressively. From 1996, the income tax rates on individuals have been further reduced to range from zero per cent to 30 per cent.

In a similar manner, corporate income tax has been reduced from a high rate of 40 per cent in 1994 to 35 per cent in 1989; to 34 per cent in 1993; to 32 per cent in 1994, 3[illegible] per cent from 1995 to 1997 and 2[illegible] percent as from 1998. Supplementary taxes which were being gradually phased out, were totally abolished in 1993. Petroleum income tax rates too were reduced from 45 per cent to 40 per cent in 1994 and to 38 percent in 1998. This trend in taxation has shown a pattern of reducing direct taxation. A further reduction in income taxes can be anticipated if the government decides to introduce a consumption based value added tax. Moreover, the Malaysian Institute of Taxation has suggested, via a memoranda to the Minister of finance, to reduce the income tax rates on small and medium-scale industries (SMIs) to a concessionary rate of 10 to 15 percent (Lee, 1999). According to Lee (1999), income tax represent a significant outflow of SMI businesses and a reduction of tax rates would alleviate their financial burden.

4.5. A Case for Consumption Based Tax

In a move to gain more revenue from indirect taxes as opposed to direct taxes, the Government has, over the years, been increasing the base of sales tax as well as service tax. Furthermore, the broadening of the scope of service tax over the yews can be seen as preparing the framework for the eventual introduction of a value added consumption tax. paralleling these developments, import duties on numerous items were reduced or abolished between 1993 to 1997. Indirectly, this amounts to a partial reduction in the tariff

protection for these products. This trend is perhaps expected to continue as Malaysia is a signatory to the General Agreement for Trade and Tariffs (GATT). Any move to further reduce income tax rates will very much depend on the introduction of a consumption-based Sales and Service Tax .

A principle objective in devising a consumption based (indirect) tax, is to broaden the tax base and to shift the emphasis of revenue collection away from the current personal income tax rates, varying from zero to 30 percent, to a system which collects revenue at much lower rates across a wider range of economic activity.

4.6 Environment Taxes

Pursuit of economic success is inextricably linked to degradation of environment if not carefully monitored by the government. For several decades, business activities that are carried out in most countries we evaluated without accounting for damage on the environmental surroundings (Elkington, 1998). Among emerging economies, Malaysia too is finding it increasingly difficult to cope with problems of environmental degradation while aspiring to be a fully industrialized nation by 2020. In 1997, approximately 4,900 industries were identified as major sources of water pollution. Of these, chemical, textile, metal and electronic industries were regarded to be significant contributors to water pollution. Table 5 reports, percentage-wise, quantity of scheduled wastes generated by different industries in 1997.

Table 5
Quantity of Scheduled Wastes Generated According to Industry
(1997)

Industry	%
Chemical	31.60
Textile	13.80
Metal	10.80
Electronic	4.60
Rubber & Plastic	2.90
Industrial Gas	2.40
Printing & Packaging	2.02
Workshop	1.30
Petroleum	0.70
Pharmaceutical	0.30
Oleochemical	0.20
Resin & Adhesive	0.10
Asbestos	0.07
Others	29.21
	100.00

Source:
Environmental Quality Report (1997), Department of Environment, Malaysia

As environmental degradation increasingly threatens sustainable economic development, the Malaysian government has to take account of environmental considerations while setting fiscal, monetary, trade, agricultural and industrial policies. One aspect of this concern is the use of green or environmentally-friendly taxes for reducing the costs to the economy of a cleaner environment. For example, a tax charge may be levied, either on emissions of pollutants, or on the inputs to polluting processes, in order to reflect the environmental costs involved and to encourage reductions in the amount of pollution. Similarly, a tax on polluting pesticides use will make it uneconomical for those who have a low return to continue using such pesticides. The imposition of tax penalties would encourage firms to discover ways to reduce emission of pollutants below a target level. In addition, the use of taxation as a market mechanism, provides further revenue as a by-product of their role in controlling environmental pollution.

4.7 Electronic Commerce

The staggering growth of electronic commerce has brought about new activities and opportunities to a borderless world. As for Malaysia, trade conducted through e-commerce is expected to reach US$26 billion in 1999 and this figure is expected to double each year (Harpal, 1999). The term electronic commerce is often used inter-changeably with internet trade and cyberspace trading. They we meant to involve any transactions involving the exchange of goods and services between two or more parties using technological tools.

Electronic commerce is expected to revolutionise the manner business transactions are to be conducted by both small and large organisations. Such an unprecedented development would, however, create serious tax consequences as a result of borderless transactions. Moreover, electronic commerce would enable vendors to spontaneously set-up 'shop lots', when required, on the

Internet where they can execute their business activities. For instance, a popular c-commerce Website on the Internet is Amazon.com, a leading global online retailer for books.

It would be problematic for Revenue authorities to trace the taxpayer and investigate the local transactions let alone dealings which have been transacted overseas. It is indeed a challenging task for tax administrators and law makers to keep up with the aggressive development in electronic commerce. Cross-border transactions defy classification of taxable and non-taxable income based on concepts of jurisdiction, territoriality and derivation of income. Furthermore, it would be difficult to connect the domain name to a particular taxpayer as there is no guarantee that a reputable worldwide business is owned by the enterprise. The absence of a paper trail, makes it difficult for tax investigators to trace the vendor, particularly those transactions made through intermediaries.

The imposition of income tax in Malaysia depends as much on the establishment of sources and residence as on whether income has been derived, and if so, when and by whom. From an income tax compliance perspective, the question of who derives the income can be ascertained by tracing who owns the investment which generates the income. As mentioned earlier, in cases involving transactions via e-commerce, ascertainment of who derives specific sales income will be difficult if a record of transactions is not kept. Furthermore, transactions may be made off-shore making it laborious to enforce third-party information reporting.

Tax policy makers in several countries have now begun to review existing tax legislation to ascertain whether they we able to cope with new methods to carry out businesses. Recent developments suggest some moves by governments to introduce new legislations to smoothen the manner of trading in the Internet. The Malaysian government too has legislated several multi-specific legislations to provide support to the Multimedia Super Corridor. More amendments to tax law are expected to follow so that issues relating to territoriality, source of income and permanent establishment are re-defined.

4.8 Tax on Financial Instruments

The last decade has seen a tremendous growth in the availability and variety of financial instruments. As expected, the growth of these financial instruments is most spectacular in developed countries especially the United States and United Kingdom but developing countries are not far behind. The tax laws in almost ill countries have straggled to keep up with the development of new financial instruments.

The shortcomings in the tax treatment of financial instruments have high social costs. Ambiguous rules increase compliance costs, provide opportunity for abuse and discourage the lawful development and use of financial instruments (Schuldiner, 1992). Rules that are inconsistent with the underlying economics of a transaction distort market behaviour, lead to an inefficient allocation of resources, and we likely to place the country's financial institutions at a competitive disadvantage in the world market. The lack of a uniform theory guiding the development of the taxation of such instruments have led to rules that are innovated on an ad hoc and piecemeal basis, resulting in the formulation of roles that we often haphazard, incomplete and inconsistent. Other than Australia, UK and the United States which have legislated regulations on foreign exchange gains and losses, other countries have yet to develop and implement a comprehensive approach to the taxation of financial instruments. Direct application of 'imported' rules from other countries can be m alternative but they would pose problems of implementation. The Malaysian taxpayers and the Revenue Board may, in the meantime, remain contented with the 'hotchpotch' rules until a uniform theory guiding the development of the taxation of derivatives are developed.

4.9 International Influence

Until lately, issues that relate to international taxation were mainly the concern of a handful number of accountants and revenue lawyers who counsel transactional corporations on how to reduce their

international tax liability (Bream 1997). This state of affairs is changing tremendously due to the rapid economic zoning of nations. Deep-rooted concern for competitiveness and awareness of the possibility for one nation's taxation to affect the counterpart nation's economic well-being underlies the new focus of international taxation. This section summarises a few thoughts on how some of the current trends in international taxation will affect Malaysia and possibly other ASEAN countries. The discussion that follows distinguishes international taxation between direct and indirect taxation. Aspects of transfer pricing involving multinational enterprises too we covered.

4.9.1 Overseas Income

One major issue that involves international taxation concerns income derived from 'migrant' capital. A country that is unmindful to the rest of the world would provide little or no double taxation relief to residents on their foreign sourced income. Such a move would raise the cost of capital exports. The risk of retaliation, however, encourages countries to bind together with bilateral agreements. The essence of such agreements is for countries not to tax on income derived from overseas investments. This option usually falls to the residence country. For instance, several OECD countries such as France and Netherlands have adopted this 'territorial' or exemption approach in the case of dividend income derived from foreign sources, An alternative approach is for the residence country to include income from overseas in its residents' tax base and then provide for relief on tax suffered in the host country. As mentioned earlier, the Malaysian taxation system is territorial in scope and only when income is sourced in Malaysia will a liability to tax arise. A resident and a non-resident company are taxed in the same manner in so far as the method of taxation is concerned. In the case of a resident company, where the income is accrued in or derived from outside Malaysia (that is foreign sourced income) it is taxable only if the income is received or remitted to Malaysia. However, as from year of assessment 1996, all income derived from overseas by resident companies and remitted into Malaysia are exempt from income tax. The change however will not apply to resident companies engaged in banking, insurance, shipping and air transport which will continue to be taxed on their world income. Judging from the current trend in taxing global income, Malaysia may also exempt income that is remitted into Malaysia by resident individuals.

4.9.2 Indirect Taxation

Indirect taxation includes both import and export taxes. Countries impose indirect taxes on imports so as to off-set the potential gain of the tax-free status of goods on global markets. Recent trends in international taxation reveal that tariffs are not a popular tool to curb imports. At the same time, both advanced and developing countries we scrambling for foreign investment resulting in a higher exposure to taxes that involve international dealings. The current trend is for goods and services to enter global markets free of tax. Export taxes are detested. Many Asia Pacific Economic Cooperation (APEC) countries, for instance, are jointly revamping and rationalising their indirect tax systems consistent with efficient global trade (McKenzie, 1992). Timetables are prepared to gradually scale down import duties. For instance, APEC leaders committed themselves to the goal of free add open trade and investment in the Asia Pacific region by the year 2020 daring their meeting in Beget, Indonesia in 1996. The 18 members of the APEC forum are Australia, Brunei, Canada, Chile, China, Hong Kong, Indonesia, South Korea, Malaysia, Mexico, New Zealand, the Philippines, Papua New Guinea. Singapore. 'I Taiwan, Thailand add the US. Although taxation is a nation's sovereign prerogative, the compelling forces of international economic integration significantly minimise national degrees of freedom in tax matters.

4.9.3 Transfer pricing

Transfer pricing provides ample opportunities for the minimisation of global tax liabilities of multinational enterprises (MNEs). International transfer pricing is the process by which monetary values we attached to transactions involving goods and services between inter-related companies (such as subsidiaries and associates) which transcend national

boundaries. The process has assumed significant importance in recent yews due to expansion of international trade and the opportunities it offers for the lowering of tax liabilities of MNEs by way, of income-shifting. Although there are several factors that influence transfer pricing decisions of multinationals, taxation is obviously a significant factor in the decision-making process of most enterprises. Transfer pricing arises primarily due to the varying tax structures of different countries. 'Tax havens' exist in many developing countries and they offer several incentives ranging from total exemption to low tax rates on various business income as m inducement for investments from overseas. Hence, it would be financially profitable to any MNE to divert these earnings to a country with minimal tax rates. An added advantage of a tax haven is the simple manner in which it operates and the absence of withholding tax on goods transferred to a related company.

The Malaysian Income Tax Act, 1967 (ITA) contains no specific provisions in respect of the value to be placed on goods transferred from or services rendered by MNEs. Moreover, there we no specific provisions in the ITA to govern the price of goods purchased from a parent company, mother company within a group of associated companies or related company. To counter manipulative practices, the Inland Revenue Board (IRB) may use the anti-avoidance provisions available in the ITA. For instance, See 140 of the Act is a general anti-avoidance provision while See 141 deals with powers regarding transactions involving non-residents. These provisions empower the Director General to disregard transactions not made at arm's length or not expected to have been made on terms between independent persons engaged in similar activities. The general rule is for companies to transact on arm's length basis. In practice, penalties we imposed in cases of outright manipulation but such a policy may change in the next millenium with Malaysia's plan to focus more on international transfer pricing rules. The primary objective of introducing specific rules is to combat tax evasion through price manipulation. More clear-cut roles can be implemented by to ensure that multinationals pay their fair share of tax to the government.

5. Concluding Remarks

This paper sought to provide m overview of the Malaysian taxation system. Commencing from the past, the paper traced the present and projected into the future of Malaysian taxation. The paper also sought to gaze at that 'tax crystal ball' and revealed a number of interesting possibilities. The Malaysian taxpayers like their counterparts elsewhere are seriously engaged in "loop-hole mining" of existing tax requirements. The tax authorities will no doubt be close behind to plug tile loophole in the existing legislation. Before long, the determined taxpayer will find a new loop-hole. This dialectic discourse between the tax collector and the taxpayer will remain an o going saga with no end in sight. This is because the parting of one hard earned income is painful for most people. Therefore, the movement towards indirect taxes where the 'extraction' is not directly visible is absolutely logical.

Malaysia which is heading towards a developed nation status has begun to reform its tax system, after taking stock of countries which have traversed this path. Hence, the introduction of new an advanced tax administrative systems we inevitable. Tax funds which serve to finance the government coffers often also serve as punitive measures. This underlying principle could be applied effectively especially with respect to environmental issues. New legislation to cover new kinds of financial instruments as well as international influences are unavoidable. As the publisher of the dictionary once said that it can never be comprehensible since even as the book is hot off the press, new words are being coined, so too, tax legislations. Even as new legislation and amendments are implemented, new types of transactions and new financial instruments will take birth, making amendments obsolete and warranting further amendments.

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Appendix 1

Malaysia: Consumer Price Index (CPI)*

Year	CPI
1990	100.0
1991	102.3
1992	107.0
1993	110.6
1994	114.4
1995	117.8
1996	121.4
1997	124.0
1998	129.2

The Self Assessment System - Are Taxpayers Prepared For Tax Audits

Prepared by
Mildrid Lopez

Every tax payer must be aware that tax audits by the Inland Revenue are part and parcel of the self assessment system. It is thus useful to view tax office audits in a pro-active, instead of a negative, light. Many busy taxpayers have recited to me their dread of seeing the standard, typed, Revenue opening letter and leaflet in their mail. Over the next 2 to 3 years the Inland Revenue personnel will invariably form various opinions about tax practitioners and their clients that have been audited. Thus, it is not hard to see that, if one's practice is able to demonstrate that it positively encourages good record keeping by its clients, the Revenue officers will be favourably impressed. Exactly the opposite is true if the clients' bookkeeping is poor, especially if penalties are awarded at the end of the investigation specifically for record keeping which does not meet the required 'self assessment' standards.

Incomplete records

The defence of clients in tax audits is not always with complete success, mainly because the Revenue successfully alleged that the primary records were not watertight. Typically, the accountant acting had instructed his junior staff to complete trading accounts from a non- balanced account book, bank records, and a carrier bag of jumbled invoices. No attempt at educating the client towards better record keeping was ever made. The client was simply allowed to present the records in whatever fashion he saw fit. This makes it very difficult for the consultant who is perhaps brought in by the practitioner- well after the first interview. By this time, the Revenue officers will have formed a firm opinion of the client, and probably destroyed the credibility of the primary records. All that is left is damage - limitation and skilful advocacy when discussing penalty mitigation. After all, how can one possible defend the indefensible? How much better, though, to be presented with a situation where the practitioner and his client had made sure that proper records, regularly and frequently maintained, were in place!

Random audits

In this scenario a perfectly honest client may expect to find himself purely by chance, as a result of random selection. It is then up to the tax practitioner and consultant to exercise their professional skill to ensure that the client is justly 'acquitted'. Whilst many tax payers and practitioners still view Revenue audits as a tiresome burden, there is something very satisfying about actually being able to prove the innocence of someone who is genuinely innocent. To do so also boosts the tax consultants reputation with the Revenue enormously, which bodes well for the future.

A positive approach

I believe the new regime of self-assessment tax audits should reach a point where both sides should view each other with mutual enmity. Tax practitioners should be pro- active enough to use investigations as an opportunity to 'show- off' how well they have disciplined their clients into acceptable levels of record keeping. There should be no room in the future in this context for negative thinking on the part of tax payers. Tax practitioners should nurture their clients such that accurate systematic record keeping is as fundamental as the profit making motive. Tax payers must take a more serious view of tax and the system that support the position. A tremendous deal of focus must be placed on the tax factor

that could significantly affect the bottom line that dictates a company's performance.

Marketing expertise

Tax practitioners should in addition to marketing their expertise to clients, by way of newsletters and seminars explain to clients. The average compliance cost of a routine Revenue audit clients would be able to insure against that. Next, the personal cost of such an investigation should be explained e.g. Stress, detrimental effect on health, etc. Finally, it would be made abundantly clear what size of penalties are normally imposed. Tax practitioners could develop Health Check audits where a full tax review with recommendations for improvements, can be designed to strengthen significantly the business against the impact of any tax audits. Clients should be made aware that each year one's chances of being audited by the Revenue increase by a rate of 2 per cent. In other words, a 2 per cent risk in year one becomes a 4 per cent risk in year two, a 6 per cent risk in year three and so on. A certain measure of audit may be necessary in order to achieve the desired result. It is no good simply telling people that they have a 2 per cent annual chance of being audited, because the natural optimists amongst them will find comfort in persuading themselves that they have a 98 per cent chance of not being selected that year so why bother to do anything for the present.

Practice growth

The foregoing illustrates how a practice can strengthen itself and its clients against tax audits right from the onset a certain degree of professionalism must be exercised in preparing for tax audits. Tax should no longer the last but the first thing on a taxpayers mind. Selecting a competent tax consultant that can provide adequate guidance is important. Practitioners who have essentially taken on only tax compliance work whereby only returns are submitted simply based on arbitrary information provided by clients, should take on a more proactive approach. In recommending a system which can be incorporated into a full fledged accounting system that can be reviewed regularly as management and budget reports. The maintenance of tax system should be an integral part of a firm's financial structure and not a "by the way" statistic.!

Q U O T E

We ought not to look back
unless it is to derive useful lessons from past errors,
and for the purpose of profiting
by dear-bought experience

- George Washington -

Transfer Pricing Developments

United States

The Maquiladoras Arrangement

The U.S. Treasury announced on October 29 that the competent authorities of Mexico and the United States had reached a mutual agreement concerning the tax regime applicable to maquiladoras (labor-intensive manufacturing/assembly plants that are able to import into Mexico component parts duty-free and reexport the finished product, with U.S. customs duties only on the value added by the Mexican labor). The agreement fosters investment in the maquiladora industry by establishing specific compliance procedures for tax provisions in each country and by reducing the potential for double taxation.

Under the new temporary regime, which enters into force starting January 1, 2000, a U.S. entity will not be deemed to have a permanent establishment in Mexico, despite other provisions of the Mexican tax law or article 5 of the U.S.-Mexico income tax treaty, to the extent that the entity reports an amount equal to the greater of:

(i) 6.9 percent of the value of the U.S. and maquiladora-owned assets used for maquiladora activities, or

(ii) 6.5 percent of the maquiladora's ordinary operating costs.

Alternatively, the foreign entity may continue to seek a ruling (advance pricing agreement or APA) with the Mexican tax authorities certifying that the maquiladora received arm's-length compensation. The ruling will take into consideration any assets, including inventory, owned by the U.S. enterprise, that are used for the maquiladora's activities. The ruling process is intended to offer taxpayers flexibility to negotiate an appropriate return in relation to maquiladora operations, using a methodology that might be more suitable than the safe harbor alternatives.

Recent Litigation

Hyatt Corp

Tax Court Partially Sustains Section 482 Adjustment to Hyatt for Use of Trademarks and Intercompany Services

In H Group Holding, Inc. and Subsidiaries v. Commissioner, T.C. Memo. 1999-334 (October 5, 1999) (Hyatt), the Tax Court partially sustained the Service's reallocation of income between Hyatt Corp.'s parent corporation, H Group Holding Inc., and its subsidiaries:

(i) for the use of the Hyatt trade name and trademarks by Hyatt International Corp. (HIC) and its subsidiaries and

(ii) for management services HIC provided to its subsidiaries.

The IRS's reallocations from foreign to U.S. entities totaled approximately US $38 million. In addition, the IRS reallocated US $69 million from one U.S. consolidated group to another U.S. consolidated group and assessed nominal penalties.

The Hyatt court evaluated related-party transactions in tax years 1976-1988, applying IRC section 482 and the regulations effective prior to the addition of the "commensurate with income" standard and the changes brought about by the 1994 final regulations. This case illustrates the importance of establishing that pre-1987 intercompany transactions were conducted at arm's-length at the time of the original transaction. Relying on Bausch & Lomb, Inc. v. Commissioner, 92 T.C. 525, 601

1989), the court concluded that, when the original transfer price of an intangible was an arm's-length amount, the Service may not challenge the transfer price in subsequent years. However, the Tax Court ruled that because the initial transfer price was deemed not to be an arm's length in the Hyatt case, the Service was authorized to make allocations for years subsequent to the year of the initial transfer of intangibles.

The Hyatt opinion provides an interesting analysis of the application of the "arbitrary, capricious, and unreasonable" standard. The Tax Court held that the Service may use different methodologies and approaches in redetermining the deficiency for trial from those methodologies on which the deficiency notices were based. Distinguishing National Semiconductor Corp. v. Commissioner, T.C. Memo. 1994-195, which held that a reallocation at trial could be deemed arbitrary, capricious, and unreasonable if the Service completely abandons the methodologies adopted in the initial, pretrial, deficiency notice, the court ruled that the IRS's allocations with respect to the royalties in question were arbitrary, capricious, and unreasonable because the change of methodology was coupled with a change of experts and a drastic difference in the deficiency notice allocation versus the trial allocations (the trial allocation was less than 40 percent of the originally proposed deficiency).

However, finding that the taxpayer did not affirmatively establish that its position was an arm's-length result, the court went on to exercise its judgment to determine the appropriate arm's- length charge.

DHL Corp.

Following DHL Corp. v. Commissioner, T.C. Memo. 1998-461, the Tax Court found that the Service's allocations of management fee income were not arbitrary, capricious, and unreasonable when no arm's-length alternative was proposed by the taxpayer. Nonetheless, the Hyatt court exercised its discretion and modified the Service's allocations, notwithstanding its acknowledgment that section 482 determinations are to be sustained absent a showing that the commissioner's discretion was abused (Paccar, Inc. v. Commissioner, 85 T.C. 754, 787 (1985).

Finally, the IRS's focus on the global tax position of multinational corporations, and the court's acknowledgment of this issue, was evidenced by the Hyatt court's observation that "a primary basis for respondent's Section 482 deficiency notice allocations was the belief that [the domestic holding company] bore the majority of the consolidated expenses of the Hyatt international group and that [the foreign subsidiaries] received the majority of the revenue." The court agreed with the Service, acknowledging that "these financial results appear to be incongruent." This argument was one of the factors that led to the court's decision that the Service's allocation of management services fees was not arbitrary, capricious, and unreasonable.

Hyatt highlights the need for multinational corporations to review their transfer pricing methodologies to ensure that the arm's- length standard is met and to strictly adhere to existing documentation requirements. In particular Hyatt, like the recent DHL case, examined the arm's-length charge for related-party services and the use of trademark and trade name intangibles

The Hyatt case also underscores the importance of reviewing intercompany services to determine whether there are significant services for which no charge has been imposed or for which charges have been imposed that are not arm's length. It is also important to note that a typical comparable-profits-method-oriented approach may not analyze intercompany service transactions. Taxpayers should maintain a focus on all intercompany service-related transactions, and review past transactions to ensure that the transaction occurred at arm's length and that sufficient documentation exists to support this contention.

IRS Valuation Partially Upheld

BTR Dunlop Holdings Inc

In BTR Dunlop Holdings Inc. v. Commissioner, (November 15, 1999), the U.S. Tax Court redetermined the values of U.K. and German manufacturing corporations acquired by stock purchase agreement and subsequently transferred in an intercompany sale. The two corporations were U.K. and German subsidiaries of a domestic corporation that each manufactured automotive, building, and industrial seals. The companies were purchased through a domestic acquisition subsidiary and subsequently transferred, the U.K. subsidiary to the U.K. parent corporation and divided interests in the German subsidiary to two wholly owned U.K. subsidiaries of the parent company.

The Service challenged the values included by the U.S. transferor in its return for the year of the transfer, arguing that section 311(b) required the recognition of gain to the extent that the fair market value exceeded basis and, in the alternative, that section 482 authorized reallocation to clearly reflect income. The taxpayer argued that the fair market value did not exceed the sales price.

The court's analysis focused purely on valuation, rejecting the taxpayer's reliance on an asset valuation method, and reasoned that, while such a method is appropriate in valuing the stock of holding companies, the U.K. and German subsidiaries were operating companies. Noting several times that the taxpayer had failed to supply contemporaneous documentation for its valuation methodology, the court relied on a discounted cash flow methodology presented by both the Service and the taxpayer, rejecting in part expert testimony offered by each party.

Using contemporaneous sales projections to calculate cash flow estimates, the court applied a discount rate of approximately 20 percent and determined a value of US $31 million for the U.K. subsidiary. (It is not apparent from the evidence presented by either party how the court determined the beta that it applied in calculating the discount rate.) By contrast, the value assigned by the court to the German subsidiary was based on representations of value on the taxpayer's return for the year of the transfer. While the taxpayer's experts argued that the German subsidiary had a lower value based on a discounted cash flow analysis, the court refused to consider a lower value absent "cogent proof" that the reported value was erroneous.

No determination was made that the IRS was "arbitrary, capricious, or unreasonable," and the IRS's valuation was not upheld in full. The court determined that there was a distribution of appreciated property to the extent the fair market value of the stock exceeded the sales price, resulting in additional income to the U.S. transferor under section 311(b) as well as withholding taxes on the deemed dividend to the U.K. parent.

Tax Court Determines Compaq Prices Are Arm's-Length; Rejects Section 482 Adjustment on Intercompany Tangible Property

On July 2, 1999, the U.S. Tax Court found that Compaq Computer Corporation (Compaq U.S.) had paid arm's-length prices for its purchase of printed circuit assemblies (PCAs) from its subsidiary, Compaq Asia (Pte) Ltd. (Compaq Asia). Chief Judge Mary Ann Cohen found that the IRS was arbitrary, capricious, and unreasonable in its section 482 allocation of US $215 million for the 1991-92 tax years, and that the comparable uncontrolled price (CUP) analysis presented by Compaq "satisfied its burden of proving that the prices in the intercompany transactions were consistent with arm's-length prices."

In supporting the arm's-length nature of its tangible property purchases from its Asian affiliate, Compaq U.S. applied a CUP analysis based on substantially

identical PCAs purchased from uncontrolled subcontractors, notwithstanding differences in some contract terms and manufacturing locations (the uncontrolled subcontractors were primarily located in the United States, where the costs of production were higher than in Asia). The CUP analysis was not a direct comparison of prices between Compaq Asia and the comparable companies. Rather, the CUP was constructed by adjusting the transactions with unrelated subcontractors, who operated on a consignment basis, into a "turnkey" equivalent (Compaq Asia operated on a turnkey basis with Compaq U.S.). Thus, the court demonstrated a fairly broad tolerance for what constitutes a CUP.

The Service argued that Compaq Asia essentially functioned as a contract manufacturer entitled only to an appropriate mark-up on its costs. The Service's methodology resulted in a transfer price that was approximately two-thirds of the CUP price. In finding for Compaq, Judge Cohen noted that, as in Bausch & Lomb, Inc. v. Commissioner, 92 T.C. (B&L), differences in manufacturing cost structures between U.S. and non-U.S. manufacturers were irrelevant in the face of appropriately determined CUPs, and that the Service was "unable to identify a single actual market participant that sold PCA's at only two-thirds of the prevailing market prices."

The Compaq decision is notable for two reasons. First, it demonstrates a Tax Court preference, as in B&L, Sundstrand Corp. v. Commissioner, 96 T.C. 226 (1991), U.S. Steel Corp. v. Commissioner, 617 F.2d 942 (2d Cir. 1980), rev'g 36 T.C. Memo. 586 (1977), and Perkin-Elmer Corp. v. Commissioner, T.C. Memo. 1993-414; 66 T.C. Memo. 634 (1993), for transaction-based methods over profits-based methods.

Clearly, petitioners and respondents before the court ignore transactional data at their peril. This lesson is not likely to be lost on the Service in future endeavors, where it may look to use the court's decision to its advantage in other cases. Although the tax years in question predate the final section 482 regulations, the decision underscores the need for taxpayers to clearly demonstrate that they have selected the best method for evaluating their transactions, and for effectively using, or carefully and explicitly ruling out, transaction-based methods.

Second, by allowing "location rents" (increased profitability due to lower production costs in Asia), to remain in Asia, the court has provided further support for the notion that offshore affiliates may retain the profits attributable to cost savings. This result is an indirect effect of the court's decision to accept the CUP methodology offered by Compaq.

As in the B&L case, the decision runs counter to the Service's litigating position that contract manufacturers should earn an appropriate profit margin for their functions, and that, because location rents would be competed away by other offshore manufacturers, any residual profitability should flow to the U.S. parent. While the decision effectively rejects this notion as a rule, it should not be seen as providing blanket support for location rents remaining offshore. Rather, the amount of location rents, and the "split" of these rents between affiliates is a fact-specific determination, dependent on demand and supply conditions for the underlying product, competitive conditions in the manufacturing locations, and the factors contributing to the cost savings.

In analyzing the implications of this decision, it is important to distinguish location rents from "location savings," which measure the differences in production costs between U.S. and non-U.S. affiliates, and to distinguish short-term rents from long-term rents. Depending on the degree of competition for the product being manufactured, location rents will not necessarily be as large as location savings, in that part of the "savings" will be passed to customers through lower prices. In a very competitive market (where any short-run rents would be competed away and ultimately result only in lower customer prices), short-term location rents would dissipate over the long-term. While the Compaq methodology has demonstrated that there may be some location rents for the years in question, these rents may ultimately be

competed away. Thus, to conclude that the Compaq decision establishes a basis for permanent profit shifts equal to geographical cost differentials would be erroneous.

Finally, the Compaq decision does not address another question related to cost savings — why are they there? Why is Compaq Asia capable of producing PCAs at such a cost advantage? The court concluded that the location rents belong in Asia, but this may be simply a mechanical implication of their accepting the CUP methodology. Indeed, in the fact-finding section of the decision, Judge Cohen describes some of Compaq's cost-efficient production processes. Could these processes be the source of a manufacturing competitive advantage? Are the processes proprietary and owned by Compaq U.S.?

Phrased differently, could part of the "cost savings" and associated rents be attributable to unique technology intangibles owned by Compaq U.S.? Might there have been a basis for a technology royalty from Compaq Asia to Compaq U.S.? In B&L, there was a separate technology royalty analysis once the CUP determination was made.

These questions highlight the fact and dependent nature of these cases, and signal caution to those tempted to draw sweeping inferences about location rents from the court's decision.

United Kingdom Developments

Advance Pricing Agreements

Following closely on the major overhaul of the United Kingdom's transfer pricing regime in 1998, 1999's Finance Act (Finance Act 1999) has introduced for the first time a specific statutory framework for advance pricing agreements. The legislation is supplemented by an explanatory statement of practice from the Inland Revenue that was published at the beginning of September, and additional guidance has been provided in the Inland Revenue's October 1999 Tax Bulletin. The goal of APAs is to assist businesses in determining complex transfer pricing issues and allow these issues to be resolved on a prospective basis. They should also assist when it is difficult or there are doubts regarding how the transfer pricing should be determined. Because the Inland Revenue will apply the concept of prudence, simple transactions will not qualify for APAs.

Although the Inland Revenue will allow both unilateral (U.K. only) or bilateral (U.K. and a treaty partner) applications, the general preference is for the latter. On an application for a bilateral APA, the information provided to the Revenue will be shared with the other tax administration irrespective of whether that other jurisdiction has an APA program. When a unilateral application is made that affects a taxpayer in another treaty country, the Revenue will routinely inform the other tax administration of the application and of progress and conclusions thereon.

The fact that only a unilateral APA exists will not affect the mutual agreement procedure under a double tax treaty. If the tax authorities in a treaty country take action that results, or will result, in double taxation in respect of transfer pricing issues addressed by a unilateral APA, a request for competent authority may still be made.

The statement refers also to multilateral applications, although there is no mechanism for reaching multilateral agreements. Multilateral APAs are, in reality, multiple bilateral APAs. The Revenue does accept, however, that enterprises engaged in global financial trading involving an overseas branch network may require comfort in a number of jurisdictions, and have indicated that they would be prepared to adapt the bilateral framework to reach agreement on a wider basis and to allocate profits accordingly. Any agreed outcome would, however, have to take the form of separate bilateral APAs. Once granted, an APA will apply for a minimum of three years and a maximum of five years, subject to revocation.

An APA may be revoked at any time if a taxpayer misrepresents or omits facts in the application that

have a material impact on the reliability of the APA to reflect arm's-length conditions or if there is a failure to comply with any provision of the agreement. There is no appeal procedure against a revocation and any disagreement would only be heard as part of the normal appeal against the assessments issued following revocation. There is no appeal procedure against a refusal by the Revenue to accept the APA application.

In certain cases, it will be possible to "roll back" the APA methodology to earlier periods, either at the request of the taxpayer or the Revenue. This is most likely to be appropriate as a means of resolving a transfer pricing dispute relating to earlier years. Taxpayers should be aware, however, that information provided to the Revenue, while confidential, may lead to inquiries on earlier periods.

Taxpayers with APAs will not be absolutely protected from transfer pricing penalties that may still apply if an incorrect return is fraudulently or negligently made and tax has been lost as a result. Similarly, penalties would be imposed if information provided in an APA application was false or misleading. Many commentators questioned the use of the term "misleading" as being too broad, particularly in view of the subjective nature of the arm's-length principle. The Revenue has retained the term, however, and will seek to apply it, for example, on the grounds that financial projections could be misleading if the basis on which they were produced was unrealistic. When false or misleading information has been supplied, the maximum penalty that can be applied is GBP 10,000.

The statement sets out the process for an APA, consisting of four main stages:

1. An expression of interest

This may initially be anonymous but will contain the basic issues on the nature and value of the transactions, the proposed transactions, and a proposal for how they should be dealt with, and confirmation that a bilateral APA will be required or an indication of why only a unilateral APA is being sought.

2. Formal submission of the application

The names of the affected parties will be required at this stage. The taxpayer should also provide three years' historical financial performance, projected financial data, functional analysis, group structure, the chargeable periods to be covered, a description of the method that the taxpayer will use to track the transaction and file the necessary returns, and identification of the critical assumptions made in reaching the proposed methodology. If in the expression of interest stage a request for a unilateral APA had been made, the taxpayer must now provide additional details of the information that should not be exchanged with the other tax authorities.

3. Evaluation

This is meant to be a flexible process of open dialogue between the taxpayer, the Revenue and, when appropriate, any overseas tax authority.

4. Agreement

This will be a binding undertaking on the parties (subject to revocation) and will detail the terms, conditions, and critical assumptions involved.

The statement also contains assurances on taxpayer confidentiality, and confirms that APAs will not be published in the United Kingdom. The information obtained, however, will contribute to the pool of information held by the Revenue on that business and, as indicated above, may be taken into account for earlier years. Four copies of an application, or expression of intent, other than those involving oil taxation, should be sent to the International Division of the Inland Revenue.

Following the APA enabling provisions in Finance Act 1999 and the statement of practice, the Inland Revenue published further guidance on the process in the October 1999 Tax Bulletin. These guidelines follow the main stages of a typical APA (as outlined above). However, it confirms five major principles the Inland Revenue regard as fundamental to the process. These are:

- Simultaneous procedures: Applications should be submitted to affected tax administrations at approximately the same time. It is the applicant's responsibility to ensure that all information is provided promptly to affected tax administrations and, when meetings are held with one tax administration, to make notes that can be forwarded to the other tax administration as soon as practicable and ideally within four weeks of the meeting.

- Coordinated approaches: The affected tax administrations should seek to coordinate their respective approaches as much as practicable to improve efficiency.

- Timetable: The affected tax administrations should agree to a joint target timetable for dealing with the various stages of the application, and will, depending on the applicant's ability to provide information in a timely fashion, aim to complete the APA within 18 months of formal application.

- Continuous contact: The affected tax administrations should keep one another informed of progress through regular exchanges of correspondence, by telephone and video case conferences, and in face-to-face meetings.

- Competent authority role: Negotiations to conclude the APA are conducted by the competent authorities of the affected tax administrations. The exchange of information between the tax administrations is also conducted under the authority of the competent authority. APA information is confidential and subject to the safeguards against disclosure provided by the terms of the exchange of information article of the pertinent tax treaty. The affected tax administrations should begin competent authority negotiations as soon as practicable, and develop provisional agreements that can be adapted as additional facts are obtained.

In addition, information on preliminary meetings is set out, as is a likely timetable for a typical application. In the United Kingdom APA applicants now have a much clearer idea of what will be required of them, and the process is much more transparent. In this regard the Inland Revenue should be applauded. Only time will tell whether this acts as real catalyst to demand for this route to transfer pricing certainty and if so whether sufficient resources will be available to the Inland Revenue for it to cope.

European Developments

Belgium

Transfer Pricing Guidelines Issued

The Belgian Ministry of Finance issued guidelines on transfer pricing in the form of a circular letter of June 28, 1999 This is the first time that guidelines on transfer pricing have been issued in Belgium. The guidelines analyze the legal framework of transfer pricing, the evidence required to support transfer pricing adjustments, and the practical approach to be followed. The guidelines address only the situation for associated enterprises. Guidelines on the allocation of income within an enterprise, (that is, attribution of income to permanent establishments) will be addressed in separate guidelines to be issued later.

The primary objective of the guidelines is to help tax inspectors to identify companies for transfer pricing audits, but there were other reasons for issuing the guidelines. First, the most recent tax treaties concluded by Belgium contain a provision similar to article 9(2) of the OECD model tax treaty that in principle obliges a state to accept corresponding adjustments. Second, the EC Arbitration Convention, which became effective on January 1, 1995, obliges EU member states to

prevent economic double taxation arising out of transfer pricing adjustments. Third, other countries have issued strict transfer pricing guidelines and are increasingly active in the field of transfer pricing. According to the Belgian Ministry of Finance, the risk that Belgium will be confronted with claims for corresponding adjustments is increasing because of primary adjustments made by other states.

Legal Framework

Belgian law does not contain any specific provisions on transfer pricing, but transfer pricing adjustments may nevertheless be made under other provisions of Belgian law that, directly or indirectly, can relate to transfer pricing issues. The guidelines discuss the provisions that deal with the recapture of profits, the disallowance of deductions, and the disregarding of transfer of assets, and it is generally concluded that the arm's-length principle applies to taxpayers in Belgium.

Practical Approach

As a starting point, the guidelines state that, if a company has obviously tried to determine its transfer prices in accordance with the arm's-length principle and it submits documents to support this, the tax inspector may presume that the transfer prices used present only a minimal risk of loss of revenue (for Belgium). In this case, the tax inspector need not carry out an extensive audit. In contrast, a company that supplies only vague, unsuitable, and insufficient information on its transfer prices is likely to attract the attention of the tax inspector.

If a company belongs to a multinational group, financial ratios must be used to decide whether to initiate an extensive transfer pricing audit. If the ratios differ substantially from the standard financial ratios for the taxpayer's industry, an audit of the taxpayer's transfer prices must always be carried out.

The guidelines also discuss how the tax authorities can obtain the information necessary for transfer pricing purposes. The taxpayer can be the first source of information, in particular, if the taxpayer has developed a transfer pricing policy and collects documentation for its transfer prices. If the taxpayer has performed transfer pricing studies and has derived serious conclusions from these studies that are supported by reliable documentation, the tax authorities must take these studies and conclusions into account and possibly accept the prices determined by the taxpayer. The guidelines state that hindsight should normally not be used to determine transfer prices, and also mention that it must reasonably be expected that Belgian taxpayers obtain from their foreign affiliates information necessary for transfer pricing audits.

International exchange of information under tax treaties can be an important source of information, in particular if the source of information is located abroad. The guidelines also point to the use of simultaneous transfer pricing audits in two of more countries as an interesting possibility for the tax authorities.

Comments

There is no statutory requirement in Belgian law that transfer pricing documentation be prepared, and the transfer pricing guidelines do not explicitly require this. It is, however, clear that taxpayers that do not take steps to prepare documentation for their transfer pricing systems in general or for specific transactions will face an increased risk of being subject to an in-depth transfer pricing audit. This is expressly mentioned in the Belgian transfer pricing guidelines on several occasions.

Another noteworthy aspect of the Belgian transfer pricing guidelines is that they follow closely the OECD transfer pricing guidelines. For example, extensive summaries of chapters I-V of the OECD guidelines are contained in an appendix to the Belgian transfer pricing guidelines. Since Belgian law does not contain detailed transfer pricing rules, it is at this moment reasonable to conclude that the OECD transfer pricing guidelines can be used to supplement Belgian law.

European Union

Arbitration Convention to Be Extended

The EC Convention of July 23, 1990, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (the Arbitration Convention) has been applicable among EU member states since January 1, 1995. This convention contains procedures for the avoidance of double taxation arising out of transfer pricing adjustments. The Arbitration Convention, however, is applicable only for a period of five years.

Political agreement was reached on extending the Arbitration Convention in May 1998, and the EU member states signed a protocol on May 25, 1999, that will have the effect of extending the Arbitration Convention by another five years. The protocol also changes the rule for the termination of the Arbitration Convention in that the convention will now automatically be extended for additional periods of five years. The convention only terminates at the end of a five- year period if a member state gives notice in writing at least six months before the end of the period.

The protocol is not yet in force and will need ratification by the EU member states. Once in force, it will become effective January 1, 2000.

France

APA Regime Introduced

The French tax authorities issued in September 1999 guidelines on advance pricing agreements thereby introducing an APA regime in France. Under the French APA regime, an APA is a bilateral agreement concluded between the tax authorities of the states concerned with the intragroup transaction(s) that determines the transfer pricing method to be used for future transactions. An APA is only possible if the other country involved has entered into a tax treaty with France that includes a mutual agreement clause similar to article 23(3) of the OECD model convention. Thus, unilateral APAs are not possible. An APA binds the French tax authorities if based on the relevant facts and if the taxpayer complies with its terms.

To obtain an APA, the taxpayer must submit an application to the tax authorities at least six months before the commencement of the tax year from which the APA is to take effect. The application must be supported with relevant information such as a functional analysis, a study detailing the transfer pricing research conducted or any signed agreements concerning the taxpayer's transfer pricing policy and working assumptions on which the chosen transfer pricing method is based. A detailed chart of the group structure and a summary review of the industrial, commercial, and financial organization of the group may be requested by the French tax authorities.

Although the application should address the transfer pricing method but not the prices, the taxpayer should provide relevant data on the price applied for similar transactions between unrelated parties and any adjustments to be made on other transactions to enable a comparison with the taxpayer's own transactions if a direct comparison is not possible. In the absence of comparable data, the taxpayer will have to demonstrate that the transfer pricing method chosen is in line with the arm's-length principle.

At the same time the taxpayer in France submits its application, the foreign entity or branch that is a party to the intragroup transaction(s) must submit an application with the tax authorities of the other state. The proposed transfer pricing method is then jointly considered by the French and the foreign tax authorities. The taxpayer is kept informed of the negotiations. Once the tax authorities of the states involved have reached agreement, the APA is presented to the taxpayer for acceptance. An APA may generally affect future years only but application to the year in which the application was submitted may be allowed. The duration of an APA is a minimum of three years and maximum of five years.

To enable the tax authorities to monitor the conformity of the taxpayer's transfer pricing practices with the terms of the APA, the

taxpayer must file an annual report for the purpose of verifying that the transfer pricing methods applied comply with the terms of the APA. If this report is not filed in time, the APA is canceled. The taxpayer is also required to keep for a period of up to six years all documentation relating to the determination of its transfer prices.

Information that the taxpayer provides to the French tax authorities is subject to the provisions in French law on confidentiality, and the information may therefore be passed on only to the tax authorities of the other country involved in the APA procedure. Taxpayers should be aware that a treaty partner would not be bound by the French rules on confidentiality, and taxpayers would need to rely on the law of the treaty partner to ensure full confidentiality in respect of the information submitted for purposes of obtaining an APA in France.

The Netherlands

Transfer of Goodwill to Permanent Establishment in the Netherlands

In a decision of August 24, 1999 the Dutch Ministry of Finance announced that business assets that are transferred from a headquarters abroad to a permanent establishment in the Netherlands must be valued at fair market value. This rule also applies to intangible property, including goodwill, if it can be attributed to the property of the permanent establishment. The valuation issue in respect of goodwill arises if a (part of a) business is transferred to a permanent establishment and goodwill is attributable to this business. The Transfer Pricing Coordination Group of the Ministry of Finance will issue a binding opinion on the value of the property transferred. This decision is in line with the principle of article 7(2) of the OECD Model Tax Convention on Income and Capital that a permanent establishment should be treated as "if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment."

Transfer Pricing Provisions in Tax Treaty With Portugal

The Netherlands concluded an income and capital tax treaty, including a protocol, with Portugal on September 20, 1999 (the treaty is not yet in force). According to article 9(1) of the treaty, transfer pricing adjustments may be made if between two associated enterprises conditions are made or imposed between the two enterprises in their commercial and financial relations that differ from those that would be made between independent enterprises. In addition to this rule, the protocol to the treaty contains two other rules on transfer pricing. First, article IX provides that a cost-sharing agreement or an intragroup service agreement between associated enterprises does not itself constitute "conditions" within the meaning of article 9(1). Second, article X states that the provisions of the treaty do not preclude the application of thin capitalization rules of a contracting state unless the associated enterprises substantiate that the conditions made or imposed between the enterprises are in accordance with the arm's-length principle because of the special characteristics of their activities or their specific economic circumstances.

Russia

Transfer Pricing Provisions Revised

A new Russian Tax Code was adopted in the summer of 1998 and became effective on January 1, 1999. The new Tax Code introduced transfer pricing.

There is now a broader definition of controlled transactions by:

(i) the broadening of the definition of related parties to include 20 percent share ownership held indirectly, and by increasing the power of the courts to determine that parties to a transaction are related parties;

(ii) the addition of "foreign trade transactions" to the list of (deemed) controlled transactions;

(iii) a reduction from 30 to 20 percent in the permitted price deviation range for purposes of defining controlled transactions (see also below) involving significant price fluctuations over a short period of time; and

(iv) the inclusion of "works and services" in controlled transactions involving significant price fluctuations over a short period of time.

The general safe harbor rule has been changed in that there has been a reduction from 30 to 20 percent in the maximum amount by which the transaction price of a controlled transaction may differ from the market price without the tax authorities being able to require a transfer pricing adjustment. The amendments confirm that, if the comparable uncontrolled price cannot be determined, the resale price method takes precedence over the cost-plus method.

A new provision has the effect of deeming the price of goods and services sold or work performed at prices fixed by the state to be at arm's length for tax purposes. The provision that said that state and local governmental bodies could be used as sources for market prices has been deleted.

ASIA

THAILAND

Under Thai tax law, in the case of

(i) goods being exported by a local branch to its overseas head office or fellow overseas branches or

(ii) goods being exported by a local company to overseas affiliated companies, the local market price of the goods will apply for income tax computation purposes, irrespective of the prices actually charged. In addition, the law also states that in the case when, without justifiable grounds,

- property is transferred without any compensation,
- a service is rendered without service charge, or
- money is lent without any compensation or interest,

or the above three transactions are entered into at amounts that are lower than the market value, then for tax purposes, the compensation, service charge, or interest may be assessed by the tax authorities based on their market value on the date of the transaction.

JAPAN

New Guidance on APA Procedure has been issued

Japan's National Tax Administration (NTA) issued a circular on October 25, 1999, regarding Japanese advance pricing agreement (APA) procedures, known as the Pre-Confirmation System (PCS). The new circular replaces the existing circular, which was introduced in 1987, and provides clearer guidelines on various practical procedures and requirements for obtaining a PCS. The new circular does not significantly change any procedures or rules, but instead contains new provisions intended to encourage companies to use the PCS. The new circular also covers deadlines of applications, necessary documents to be filed, amendment or cancellation procedures, and possibility of rollback to prior years, which were not covered by the old circular. The new circular is effective for PCS applications made on or after October 25, 1999.

short news section

Labuan, Tax Incentives & The OECD Harmful Tax Competition

In pursuit of their effort to combat harmful tax practices, OECD governments are in the process of identifying jurisdictions which function as tax havens and are taking steps to eliminate the adverse consequences which those jurisdiction have on the world economy.

The identified jurisdictions will be encouraged to eliminate the harmful features of their regimes as part of an ongoing co-operative dialogue with the OECD Forum on Harmful Tax Practices. In situations in which those discussions are unsuccessful, coordinated countermeasures by OECD member countries are foreseen.

Under the 1998 Report, a tax haven is a jurisdiction that:

- imposes no or only nominal taxes (generally or in special circumstances) and
- offers itself or is perceived to offer itself, as a place to be used by non-residents to escape taxation in their country of residence and
- possess confirming criteria. These confirming criteria are:
- lack of effective exchange of information;
- lack of transparency; and
- attracting business with no substantial activities.

These criteria are consistent with the nature of the tax poaching schemes that are the object of the OECD's work: schemes that impede the ability of home countries to enforce their own tax laws.

After submitting its preliminary work to the Committee on Fiscal Affairs, a dialogue will continue with the jurisdictions under review and publication of the Forum's findings is not expected until after the June 2000 QECD Ministerial meeting.

The reporting to Ministers is expected to distinguish between uncooperative tax havens and jurisdictions that choose to commit themselves to work towards eliminating the harmful aspects of their regimes. No distinction will be made between jurisdictions that are independent states and those that are dependencies.

The Forum also made significant progress this week in its work of reviewing the preferential regimes of OECD Member countries. The 1998 Report foresaw that Member countries would complete a self- review of their preferential tax regimes by April 2000 and recommended that they *eliminate any harmful features of such regimes by April* 2003.

The results of this work are also expected to be presented to Ministers in June 2000. In addition, a high-level meeting will take place in the same month with economies outside the OECD area in an effort to engage them further with the fight against the spread of tax havens and the use of harmful preferential tax regimes for financial and other geographically mobile services.

Thin Capitalization Rules

The thin capitalization measures will be strengthened to prevent multinationals from reducing their Australian tax by allocating a higher share of debt to Australian operations.

The general ratio of 3: 1 covering all debt, not just related party, is to be applied with an arms-length provision so that the amount of debt can be increased if it can be shown that arm's-length parties would lend to higher ratios for instance, non-recourse project finance.

Malaysia does not have thin capitalisation rules in its

income tax act, however this issue is important for exchange control purposes.

Kharaj and State Business Levy

The New State Government in Terengganu is looking into the possibility of imposing a new state business levy on non Muslims.

Muslims currently pay zakat, whilst non Muslims might be required to pay Kharaj.

Early this year the State Government of Sarawak also introduced a new state sales tax.

Tax Instalments For Business & Companies In 2000

Business and companies will have to start paying their income tax instalments early next year.

The amount, due date for payment and the respective Years of Assessment rules have been changed.

The penalties for late payment are quite severe.

Elecronic Commerce & UK

The U.K. Inland Revenue has announced the release of a paper on e-commerce that describes how the growth in electronic commerce and in electronic communication. will affect tax policy and tax administration.

A chapter on international rules on direct taxes identify the following as important areas:

International Direct Tax Issues

- place of residence of companies;
- quantifying business profits;
- characterisation of income.

In order to quantify as business profits, the following issues are important, i.e. transfer pricing, trading by non residents & permanent establishments and the attribution of profits to a permanent establishment.

Tax Waiver Year - Bonus Payments

The tax waiver year comes to an end. Many are unclear as to when to pay bonuses so that the employees will benefit in maximising their income in this tax-free year. A

- *The Employers Position*

It is more beneficial taxwise for employers to pay a Year 2000 bonus as opposed to a Year 1999 bonus. A year 2000 bonus secures a tax deduction.

Employers however may wish to pass the benefit of the 1999 tax waiver to its employees. For employers with a 31st December year end, may consider a bonus in excess of two months in December as the tax on income earned in the year to 31st December 1999 is waived, the bonus restriction will merely increase the exempt income of the company.

- *The Employees' Position*

Employees are taxed on employment income receivable in the calendar year. The word "receivable" means from legal standpoint that entitlement has occured, i.e. the income has become due and payable.

In respect of bonuses, the date when entitlement occurs depends on whether it is a contractual bonus where the employment contract stipulates an annual bonus will be paid, say based on a formula for instance, then the 1999 bonus is receivable in 1999.

As such, it forms part of the 1999 income and is hence exempt by virtue of the 1999 waiver. The date of actual payment of the 1999 bonus is irrelevant when determining the year it should he assessed to tax.

Where the bonus is discretionary i.e. the employment contract stipulates that an annual bonus will be paid subject to the discretion of the employer, then entitlement

urs when the discretion is exercised.

be due and payable in 1999, the discretionary bonus ll need to be declared by the employer on or before 31 ember 1999.

RB - Y2K Compliant

Inland Revenue Board (IRB) has spent RM 10.2million nsure that tax collection and services will be Y2K mpliant.

s a contingency plan, the IRB has printed hard copies of ch of the 4.2million taxpayers' statements and the tax claration forms for the year 2000 for distribution in bruary.

Foreign Companies In Indonesia

Indonesia's Ministry of Industry and Trade recently issued gulations requiring foreign' companies operating in the untry to lodge audited financial statements with the Registrar of Companies (Kantor Pendaftaran Perusahaan) an annual basis.

The regulation covers all operations, including subsidiary companies, branch offices, auxiliary offices, agents and representatives. The regulation does not cover operations that are not empowered to conclude contracts.

The financial statements are to be audited by qualified professionals who will also be responsible for lodging documents with the government.

Foreign companies that do not conduct business through those offices, are not required to file statements for their Indonesian offices. Examples are trade representative offices maintained in Indonesia merely for the purpose of marketing, collecting information and performing similar activities.

Cayman Islands - Recent Legislation

The Cayman Islands recently passed legislation requiring all banks to know the origin of their depositors' money. Banks failing to observe this new requirement will be liable if any criminal association or activity is detected.

Q & A To The Self Assessment System

The introduction of the self assessment system of taxation will involve a shift of burden on taxpayers to regulate their own tax affairs. The responsibility have now been placed firmly on taxpayers to understand interpret and apply the law.

The proposed legislation has been tabled before Parliament as the Income Tax (Amendment) (No.2) Bill 1999. Companies enter into self assessment in YA2001. The following are some answers to questions on the self assessment system.

1. **When are companies required to submit their Tax Return?**

Companies are required to submit their tax return within 6 months following the close of the accounting period.

2 **What must be specified in the Tax Return?**

The tax return must specify the chargeable income and the amount of tax payable for that year as well as other particulars as required by the IRB.

3. **How may companies submit their Tax Return?**

When available, companies may submit their tax returns on an electronic medium or by way of electronic transmission.

4. **When is an assessment raised on the company?**

The Tax Return submitted by the company will be deemed that to be an assessment that has been raised and served on the company on the same day.

5. **When do companies lodge an appeal on controversial issues?**

Where a company has taken a defensive filing position in respect of controversial or unresolved past years issues it will need to lodge an appeal against the

deemed assessment within 30 days of submitting the tax return.

6. When must companies furnish an estimate of its tax payable?

Every company is required to furnish an estimate of its tax payable no later than 30 days before the beginning of its accounting period.

7. How is this estimate determined?

The estimate of tax payable must not be less than the estimate/revised estimate for the previous year (eg. estimate for YA2002 based on estimate/revised of YA2001).

8. When must companies begin paying its estimated tax?

The estimate of tax payable must be paid in equal monthly instalments (based on the number of months in the basis period) by the 10th day of every calendar month, beginning from the 2nd month of the basis period for which the estimate is furnished.

9. Will the company be able to revise its estimate?

Yes, a company may revise its estimate of tax payable for the year only in the 6th month of the basis period.

10. How will the revised estimate affect the instalment payments for the following months?

Where a revised estimate exceeds the tax instalments already paid, the difference will be payable equally over the remaining instalments.

Where the revised estimate is less than the tax instalments already paid, the remaining instalments will cease immediately'.

11. What happens if the actual tax payable exceeds the estimate or the revised estimate?

A penalty of 10% will be imposed on the excess amount where the excess amount is more than 30% of the actual tax payable.

12. What happens if there is a default in payment of an instalment?

A default in payment of any instalment by the due date will attract a 10% penalty

13. When s the balance of the company taxes d and payable?

The balance of tax is due and payable on the last d of the 6th month following the close of the relev accounting period.

14. Will the company be able to pay the balance its tax liability by instalments?

No, the Director General no longer has the discret to grant approval for balance of taxes to be paid instalments.

Income Tax (Amendment) (No.2) Bill 1999- Transfer Pricing

Transfer pricing is becoming an issue in Malaysia. This indicated by the fact that, the 1999 Form C requir information on inter-company transactions and gross prof and net profit results for YAs 1996-1999. It shows th the IRB is collating relevant data to enable them to sta transfer pricing audits. Thus appropriate documentatio will he critical to ensure that companies are able to justif that the prices of the good or services transacted betwe related parties are at arm's length.

In October 1999, the Malaysian government released th Income Tax (Amendment) (No 2) Bill 1999 which introduces the self-assessment system. The self-assessment regime will come into force in 2001 fo corporate taxpayers. Under self-assessment, the responsibility to calculate chargeable income and the amount of tax payable on that chargeable income will shift to the taxpayers themselves. With this shift, it is expected that the focus of the tax authorities will be directed towards enforcement and field audits will become a common feature of our tax system.

In the event of an audit adjustment which gives rise to a higher chargeable income, a penalty will be imposed on the taxpayer by virtue of either Section113 of the ITA or Section 114 of the ITA. In consequence, a penalty of up to 100% of the tax undercharged may be imposed on the taxpayer if the understatement of income is not due to negligence. Where the taxpayer is found to be negligent,

the penalty will increase to 200% of the tax undercharged. Additionally a fine of between RM1,000 to RM10,000 will also be levied.

If the taxpayer is found to have willfully and intentionally understated his chargeable income, the penalty will increase to 300% of the tax undercharged and he may be imprisoned for a term of up to 3 years. In addition, a fine of between RM1,000 to RM20,000 will be imposed.

It may be noted that the amendment of section 114 pursuant to the Income Tax (Ammendment) (No.2) Bill 1999 also sets the standard of care for any person who assists in, or advises with respect to, the preparation of any return. Where the return results in an understatement of the liability of tax of another person, the person who advised or assisted will be guilty of an offence and be fined unless the assistance and advice is given with reasonable care.

OECD On E-Commerce & Taxation

In a recent report, the OECD has clarified their role in relation to taxation and e-commerce. In summaty, their role is directed at:

- establishing an international consensus on the application of taxation norms and practises which will serve the interests of governments, business and consumers in terms, in particular, of certainty, consistency and simplicity;
- doing so through a comprehensive dialogue with businesses, taxpayers and consumer interests and with non OECD member countries; and ideally, by building on the technology of e-commerce itself and so
- delivering an international fiscal environment which fosters the development and growth of e-commerce and at the same time safeguarding the revenue yield of countries.

The Australian Tax Office and E-Commerce

The Australian Tax Office (ATO) has reported that the current levels of internet-based business activity have 'little immediate impact" on tax revenues. They were however quick to comment that the escalating growth of the internet and speed with which large transactions could take place meant that action was required to prevent potential erosion of tax revenue.

The ATO's action plan includes the establishment of an e-commerce consultative forum and specific initiatives to address potential revenue impacts. This includes using e-commerce methods to improve taxpayer service and addressing GST issues.

Current Year Assessment - Instalment Payment

The long awaited guidelines on tax payments under the Current Year Basis for YA2000 and YA2001 onwards have now been released by the IRB. The following Q&A format will help explain the new rules. We would like our readers to note that this should be read together with the earlier set of Q& As outlined in this section.

1. Have the rules pertaining to tax instalment payments been changed for YA2000?

The rules prescribed under section 107B which govern tax instalment payments generally remain unchanged except for the nunber of insalment to be paid. The due date for payment is still on the 1st day of the month (payable within 30 days).

2. Will there be a new form issued for the YA2000 tax instalment scheme?

Yes, a new Notice of Instalment Payment known as Form CP 200 will be issued for the YA2000 tax instalment scheme. This new form will effectively replace the existing Form CP38SA

3. Does an estimate of tax payable for YA2000 need to be submitted by the companies?

No. Based on the current practice, we expect the IRB will issue the CP 200 based on the companies tax liability for YA 1999. Where this is not available then the estimate will be based on the 1998 tax liability.

4. Does the same rule apply to the YA2001 tax instalment scheme payment.

No. Please refer to the earlier Q&A.

5. When is the 1st tax instalment payment due for YA2000?

The first instalment due for YA2000 for all companies is the 1st day of January 2000 and is payable within 30 days from that date.

6. How frequently will the tax instalment payments for YA 2000 need to he made?

The instalment pavments for YA2000 will be spread over 12 months for all companies as opposed to the previous practice of only 5 payments bi- monthly. However see no 8 below regarding additional instalments

7. Wouldn't there be an overlapping period where YA2000 and YA2001 tax instalments payments are due?

Yes, there will be an overlapping period of tax instalment payments for YA2000 taxes and YA2001 taxes for all companies with the exception of companies with a 30 November and 31 December year end.

8. How is the IRB helping the taxpayer to ease the cash flow burden for the overlapping periods?

The IRB will grant additional instalments to tax payers to ease their cash flow requirements. The basis of the additional instalments granted are:-

(i) the number of instalment payments which overlap for YA2000 and YA2001 in year 2000.

(ii) plus 2 more instalment payments.

9. Will companies have to apply for these additional tax instalment payments?

No, the additional instalment payments will be granted automatically.

10. How will the amount for the tax instalment payments be determined?

All companies will continue to pay their YA2000 tax instalment payments in accordance with the CP 200 until it reaches the overlapping period, if any. Further instalments will then be granted (as explained in no.8).

The balance of tax instalments for YA2000 will then be evenly spread over the extended period.

Illustration -year end 31 January2000 (YA2000)

Amount per CP200 -	RM	1,200,000
Monthly instalment payment -	RM	100,000
Overlapping period* -		10 months
(i) Further instalments granted -		10 months
(ii) Plus 2 months -		02 months
Total instalments -		22 months
First 2 instalments per CP200 -	RM	200,000
Balance of YA 2000 -	RM	1,000,000
To be paid in 22 instalments -	RM	45,455

*YA 2001 tax instalment payments begin in March 2000 for such companies, hence the YA2000 and YA2001 tax instalments will overlap for 10 months from March to December 2000.

11. If there is an overlapping period, how will companies be informed of the revised tax instalment amount tobe paid?

A revised notice known as Form CP 201 will be issued by the IRB to inform the companies of the revised tax instalment amount.

12. How will companies be informed of the YA2001 instalment payments?

The YA 2001 Notice of instalment payments (CP 205) will be issued by the IRB together with the CP 201. However as the estimate of tax pay able for TA2001 is furnished by taxpayer company they would already be aware of the amount and therefore should plan their cash flow requirements accordingly.

13. What happens if the estimated tax liability furnished by a company for YA2001 is NIL? Would further instalments be granted for YA2000?

Since there is no tax liability for YA2001 therefore there is no overlapping instalment payments. Thus taxpayers will have to comply with the original 12 instalments issued under CP 200 for YA2000.

Cases

C& Others
v
Director General of Inland Revenue

Special Commissioners of Income Tax - Kuala Lumpur

THE ISSUE

What is the disposal price of 100,000 share of Plymax Industries (M) Sdn. Bhd., a land - based company. Real Property Gains Tax Act, 1976 - Whether the disposal price of shares is based on the value of the land which is the only asset of the company

THE FACTS

The taxpayer disposed of 100,000 shares in Plymax Industries (M) Sdn. Bhd. at RM357,627.91.

Arguments by the taxpayer

(i) The disposal price should RM357,627.91 and not RM810,000.00 i.e. the market value of the land which is the only asset of Plymax Industries (M) Sdn. Bhd.,

(ii) The taxpayer did not dispose of the land.

The authorities referred to by the taxpayer were:

1. Real Property Gains Tax Act, 1967 (Act 169)

2. Advanced Accounting, (6th Edition) by R. Keith Yoston and E. Bryan Smyth.

Arguments By Revenue

The disposal price should be RM810,000.00 i.e. the amount or value of consideration in money or money's worth for the disposal of the chargeable asset.

The authorities referred to were:

1. Real Property Gains Tax 1976 (Act 169);

2. Real Property Gains Tax - Principles, Policy and Practice By Choong Kwai Fatt;

3. Words and Phrases - Legally Defined 3rd Edition.

4. Secretan v. Hart (Inspector of Taxes) [1969] 2 All E.R. 1196;

5. Spectros International plc. (in voluntary liquidation) v. Madden (Inspector of Taxes) [1997] STC 114;

6. EV Booth (Holdings) Ltd. v. Buckwell (Inspector of TAxes) [1980] STC 578; and

7. Cape Brandy Syndicate v. IRC [192] 1 K.B. 64.

Held dismissing the appeal and confirming the assessment -

The disposal price of the 100,000 shares in RM810,000 based on the market value of the land.

MEMORANDUM TO THE MINISTER OF FINANCE
ON
THE NATIONAL BUDGET FOR THE YEAR 2000

Fowards Sustaining Recovery And Reinvigorating Economic Growth As Well As Strengthening Economic Resilience And Competitiveness

A Fiscal Perspective

PREAMBLE

The "virtual" IMF policy adopted in 1998 in response to the Region financial turmoil and its consequential credit squeeze have caused great financial distress and pain to the country in general and the business sector in particular. If that policy had continued, almost all Malaysian businesses would have been technically bankrupt.

For our recovery to be sōlid and sustainable and to avoid the weaknesses of the past, it would take time. The trickle- down effect on the real economy would necessarily be longer, even though the capital markets of the region while seemingly recovering at a remarkable pace, may still be considered fragile.

Therefore, Government through the NEAC and other related agencies, has a vital role to play in nurturing our economic recovery and implementing measures that would ensure that our recovery is on firmer ground and sustainable over the long term. The steps taken by the NEAC have been successful in not only containing the earlier damage but also enabled the recovery process to gain momentum. This is highly commendable, although much more needs to be done to promote, motivate and encourage our economy to move forward.

The MIT and MLAa as professional bodies would like to propose the following fiscal measures which may be of assistance to the country's recovery process:

1. Sustaining Recovery

To avoid shrinking demand and rising corporate failures, the government responded by easing monetary policy and adopted a more expansionary fiscal policy to jump-start our economy. This has revived the production capacity of the Malaysian companies and maintain the vitality of the national economy.

The National Economic Action Council or NEAC was set up to provide the economic solution and bring the economy back on track. It must be commended on its efforts in restoring economic recovery and preventing the situation from deteriorating. This has strengthened our economic fundamentals.

1.1 Impediments for Restructuring

One of the key measures formulated by the NEAC in the National Economic Recovery Plan (NERP) is the reform of financial and corporate sectors. An effective way is to encourage rationalisation of operations and reconstruction of companies in the private sectors. particularly the financial services and the construction sectors.

While the strategic conglomerates and banking institutions may obtain assistance from Danaharta, Danamodal and Corporate Debt Restructuring Committee (CDRC) to resolve their credit problems, there is no emphasis on the restructuring exercise. In fact companies trying to restructure and rationalise their activities are faced with significant impediments that prevent successful implementation of these restructuring exercise. The Malaysian Institute of Taxation (MIT) and the Malaysian Institute of Accountants (MIA) would

like to propose the following fiscal measures to assist the government in realising its objective.

A. Stamp Duty Reforms

Currently, ad valorem stamp duty charged in respect of transfer of corporate property made either

a. in connection with a scheme for reconstruction) or an amalgamation or an amalgamation of any company or

b. between "associated companies" may be relieved tinder sections 15 & 15A of the Stamp Act 1949.

The relief provisions include stringent conditions with regard to the composition of the transfer consideration holding period for the consideration shares issued and with regard to the relationship between the transferor-transferee companies. A restructuring scheme requiring adjustments to the ownership structure "in, compliance with government policy on capital participation in industry" may not succeed in meeting those specified conditions and thus not entitled to the relief.

We propose that Sections 15 and 15A be appropriately amended so that the relief is also available to a transfer of corporate property between associated companies.

B. Real Property Gains Tax (RPGT)

Similarly, transfer of property or shares in real property companies under a scheme of reorganisation. reconstruction or amalgamation can only be relieved from RPGT if prior approval of the DG1R had been obtained and

a. the transfer is between companies in the same group to bring about greater efficiency in operation for a consideration consisting substantially of shares in the company or

b. the transfer is to implement any scheme directly connected with any transfer or distribution of ownership of an asset in Malaysia to a Malaysian resident company which is being restructured under such a scheme in compliance with government policy on capital participation in industry.

Provided that the DGI R may withdraw the approval within 3 years if

i. it appears to him that the transfer was made wholly or partly for some other purpose other than the above, or

ii. in the case of (a) above, the transferee ceases to be in the same group of companies as the transferor, or

iii. the transferee ceases to be resident in Malaysia.

Under the current economic situation, companies are restructuring to reduce their risks exposure and to improve chances of viability. Thus, it may not fulfil the conditions indicated above. In addition, prior approval may take some time and time is of essence in business decisions. Further there is uncertainty whether the DGIR will withdraw the approval.

We propose that where property was transferred in a scheme of reorganisation, reconstruction or amalgamation, which has resulted in improvement of the viability of the group of companies, real property gains tax on the transfer of property should be exempt or deemed no gain no loss situation and no prior approval of the Director General is required.

C. Income tax

Currently, where all asset is disposed of in consequence or a scheme of reconstruction or amalgamation of companies, future capital allowances claim of the asset will "flow through" from the transferor to the transferee. However, if a restructuring exercise involves transfer of business and assets or winding up a company, the unabsorbed business losses and unabsorbed capital allowances are not allowed to be transferred from transferor to transferee nor among group companies. This has resulted in substantial loss of benefit to group companies making the restructuring not cost effective.

Similarly, where a company has to be wound up in a restructuring exercise it may lose its Section 108 credit balance if it does not have enough cash to distribute sufficient dividend to deplete the credit balance.

We propose that the unabsorbed business losses and unabsorbed capital allowances together with the Section 108 credit balance be allowed to be transferred from the transferor to the transferee, or among group companies under a restructuring exercise.

D. Reinvestment Allowance

Currently, when a company transfers its business to another Company during restructuring exercise, the reinvestment allowance enjoyed by the former in respect of qualifying capital expenditure incurred on assets may be withdrawn if the transfer of assets occurred within 2 years after its acquisition.

We therefore propose that provision should be made to, allow transfer within group companies under a restructuring exercise without any clawback in the reinvestment allowance.

1.2 Tax Reforms to Alleviate Hardship

In line with the objective of enhancing recovery, the MIA/MIT would like to suggest the following tax reforms to alleviate he burden of the taxpayers during this crisis period so as to enhance recovery and sustain demand:

A. Time-barred Assessments

With effect from 1. 1. 1999, the power of the Inland Revenue Board (IRB) to issue or revise an assessment is reduced from 12 years to 6 years The IRB has issued many assessments before the deadline, ie. on 31 December 1998. Many of such assessments were issued as a protective measure due to the lack of information or due to controversial technical issues. Under the current system, tax has to be settled notwithstanding any appeals. This has caused hardship to many taxpayers, particularly in the current credit squeeze environment.

Currently, the Director General of Inland Revenue (DGI R) has no power to issue a standover on any assessment issued. In many instances, the additional assessments is a substantial burden to the taxpayers. Although the Collections Branch of the TRB has been accommodating in granting instalment payment of tax, the taxpayers are still unable to pay the additional tax raised. Thus, penalties are imposed for late payment.

We therefore propose that where assessments were raised due to lack of information or on controversial technical issues, a standover of tax should be given where appropriate. In addition, the DGIR should be empowered to grant a standover of tax in appropriate situations.

B. Sales and Service Taxes on Bad Debts

Presently vendors of taxable goods and services are required by legislation to shoulder the burden of sales and service taxes in respect of sale of goods or services irrespective of whether the payments have been collected. This has caused undue burden to the taxpayers as in a time of credit squeeze, payments are slow if not actually bad.

We propose that the relevant Acts be amended to allow taxable persons to claim bad debts in computing sales tax payable i.e. net-off sales and service taxes which have been paid on bad debts against those collected and due to be remitted within the taxable period. Further, the concession to grant professional firms to pay service tax only upon receipt of payment from clients be restored.

C. Exemption For Compensation of loss of employment

During this financial crisis many companies have down sized their operations and as a result staff had to be released. Paragraph 15(1) (b) of Schedule 6 to the Income Tax Act 1967 provides that payment by employer in respect of compensation for loss of employment shall be exempt in the hands of an employee up to an amount as ascertained by multiplying the sum of RM4,000 by the number of completed years of service with that employer. The Institute believes that it is time to review the exemption limit.

The provision was introduced in 1986. At that time, a person with only employment income of RM6, 300 annually would not have to pay tax. Since then there has been a significant long period or economic growth and consequently the costs of living had increased tremendously. Currently ,the threshold for staying outside the tax net is RM12,900, bearing in mind

that personal relief has not been reviewed since 1980. Therefore it is timely that the threshold for exemption, be revised.

In line with the government policy to continue with the equitable and socio-economic agenda in helping the poor, the MIA/MIT propose that the exemption under paragraph 15(1) (b) of Schedule 6 to the Income Tax Act 1967 be increased from RM4,000 to RM12,000),

D. Shares buyback

Share buyback is a measure introduced to provide listed companies whose market price fell below its fair value due to the financial crisis a means to protect their interests. In 1998, Companies Act 1965 has been further amended to allow a company which has purchased its own shares to either cancel the relevant share capital or to distribute the shares as share dividends to its shareholders.

a. Distribution of Treasury Shares

Where a company distributes the treasury shares (its own shares) to its shareholders, concern arises as to whether the distribution constitutes a distribution of dividends in specie and therefore have to comply with the requirements of Section 108 of the Income Tax Act 1967.

MIA/MIT propose that the distribution should be treated like a distribution of bonus shares and not to be regarded as dividend subject to section 108 requirement.

b. Sale of Treasury Shares

Where there is a sale of treasury shares, concern arises as to whether the gain on disposal is subject to income tax. It is submitted that the gains on disposal of treasury shares is equivalent to share premium received in a new issues of shares. The gain on disposal should be treated as capital gains and credited to a share premium account.

MIA/MIT therefore submit that the gain/loss on disposals of treasury shares should be considered as capital and not subject to income tax.

2. REINVIGORATING GROWTH

In the past 12 months, we witness the fall of Base Landing Rate from a high of 12.27% (June 1998) to 7.25% (June 1999) and arise in KLSE Composite Index from 455.6 (June 1998) to 811 (June 1999). These are positive signs that our economy has bottomed out. We are now in the next stage of economic recovery, i.e. stimulating growth. An expansionary fiscal policy is to be adopted.

2.1 Strengthening Construction Sectors

The hardest hit sectors during the Region's financial turmoil are the financial and construction sectors. The establishment of Danaharta, Danamodal and Corporate Debts Restructuring Committee (CDRC) have gradually restored the market confidence in our financial sector. Economic indicators have started to show positive trends. Nevertheless the construction sector is still struggling. We propose the following to further stimulate recovery and growth:

A. Mortgage Interest on Properties Newly Acquired

The credit squeeze has resulted in high interest costs for the developers an unavailability of funds for the purchasers. Thus, resulting in a glut in the property market. With the government successfully lowering the interest rates and improving the lending, the demand has improved.

To reinvigorate the construction industry and encourage individuals to purchase properties, thereby strengthening the construction industry, the MIA/MIT would like to propose the following measure:

We suggest that the mortgage interest incurred by a resident individual on one of the properties newly acquired be allowed for deductions against income of that individual.

B. Recognition of Income

Housing developers are assessed on the estimated profit recognised using percentage completion method. Developers have to pay based on "projected profit" which may not be reflective of the performance.

We suggest that completion method be allowed for housing projects which do not stretch for more than 3 years. In addition, each phase of a

development should be considered as one project.

2.2 Attract Foreign Investment

To revitalize our company, we require more investments, be it from foreign investors or from local investors.

Our country has enough incentive to attract foreign investors. What we need may be to ensure that investors are assured of their positions. In this respect, MIA/MIT would like to recommend the following measures and reforms:

A. Discouraging Retrospective Actions

While we must uphold our sovereignty to impose our local law, it would be unfair to investors if new measures, rules or legislation are introduced retrospectively. This is because they were not aware of those new measures, rules and legislation at the point when they first made their investment decisions.

To enhance investors confidence, the Institutes suggest that any new measures, rules and legislation in future should be implemented prospectively rather than retrospectively.

B. Tax Reforms for Appeal Procedure

Appeal system regulates the procedure of disposing of grievances of taxpayers. Currently, the tax appeal process is costly and may drag for a long time.

To improve the effectiveness and efficiency of our appeal system, the MIA/MIT recommend that

a. Income Tax and Real Property Gain Tax Regime

i. That the appeal procedure be streamlined as follow:
Upon service of Notice of Assessment, taxpayers must appeal within 30 days to DGIR stating the grounds of appeal. The appeal should be reviewed and replied by the DGIR within 60 days after the receipt of the appeal stating the grounds of rejection. Otherwise, the notice of assessment will become void.

ii. that an independent person with suitable qualifications and experience be appointed or arbitrate preliminary between IRB and taxpayers. Taxpayers aggrieved by rejection of DGIR may further appeal to the Adjudicators within 30 days after being notified of the rejection. The adjudicators must decide the case within 6 months after submission of appeal.

iii. that either party may appeal directly to the Special Commissioners within 30 days after receiving the Adjudicators decision. Alternatively, notice of assessment by IRB becomes void 6 months after the submission of Form Q by the taxpayers unless IRB has forwarded the appeal to the Special Commissioners.

iv. that once Form Q is filled, no civil action under Section 103 and 106 of the Income Tax Acts shall be institutes or proceeded until settlement of the appeal has been reached. However to prevent abuse of appeal procedure and cancel any financial advantage of late payment of tax, interest should be charged on tax underpaid calculated from the original date of notice of assessment.

v. That written judgment of Special Commissioners be made available to he public without identifying the taxpayers' identity.

b. Sales Tax and Service Tax Regime

i. that the appeal for sales and service tax be subject to judicial review.

Currently, a taxable person may appeal to the Director General of Customs and Excise (DGCE) disputing on Sales and Service taxes levied. He may further appeal to the Minister within 30 days of being notified of the decision of DGCE. The decision of the Minister shall be final and not subject to review in any court.

c. Time Lag of Legislation

We noted that the government is quite responsive to current economic change. However in certain instances, legislation of a number of incentives announced during previous budgets were not available until several years later.

The Institutes propose that this to be improved.

2.3 Promote the development of Small and Medium -Sized Industries (SMI)

SMI is not only a backbone of our manufacturing sector but also by itself constitutes a significant component of our national company. In the recent years, the government has been promoting the growth of SMI. The strength and the resilience of SMI has prevented the collapse of our company and is crucial to the recovery of our economy.

The MIA/MIT recommend that the following measures be taken to assist in revitalizing our SMI.

A. Consultancy Incentive for SMI

SMI generally lack expertise due to the their limited resources. Currently, SMIDEC and SIRIM are providing some consultancy to the SMIs. Providing incentive on consultancy expenses incurred will not only improve the efficiency and competitiveness of SMIs but also promote our educational industry.

B. Reduced Rates of Income Tax imposed on SMIs

SMI are usually run by owners full time. As they are small, the financial resources are limited. As a result, tax appears to be significant outflow to their businesses. A cut in the tax will certainly elevate their financial position. This together with the benefit of assistance from the government which SMIs enjoy may also help to improve tax compliance and hence revenue collection in that taxpayers may be more willing to come more forward and declare their income.

We suggest that the SMIs be taxed at a reduced income tax rate.

C. Reforms of Indirect Taxation

a. Import of Spare Parts

Some of the plant and machinery imported are duty free but the levy on their spare part are high. As a result, it is very costly to repair the machinery. In addition, some companies use those spare parts to assemble their end products. As a result, their end products are too expensive to compete with the imported ones.

We suggest that DGCM review the rates of custom and excise duties together with sales tax to ensure that spare parts are taxed at the same rate or lower when compared with the finished products.

c. Increase Threshold for Sales Tax

To improve the competitiveness of small industries and reduces their cost of operations, we propose that the turnover threshold for sales tax be increased to RM500,000.

2.4 Stimulating Import

As the economy crisis has also hit our purchases, many of our purchases may reduce their import due to the impact of the slow down in economy, with the exception of United States. It is therefore important if we can explore new markets through various channels. We also need to improve our competitiveness both in terms of product quality and pricing.

A. Explore new markets

In order to promote our product to new markets, private sectors must co-ordinate with the government, not only in participating or organizing trade missions and trade fairs but also in looking for new markets and improving marketing strategy. In this respect, we suggest that the authority extend their efforts in exploring new export markets for promoted goods to services, including marketing and advertising services.

2.5 Increase Expenditure

To reinvigorate our company under the current condition, the government has adopted an expansionary budget. Public expenditure is increased to give a thrust to our economy. Financing this policy will be a burden to the government to finance the budget.

In this respect, MIA/MIT suggest that the following may be done to improve revenue collection.

A. Introduction of Consumption tax in place of current Sales and Service Tax

In the long run the government should consider introducing Consumption Tax to widen the tax base. The introduction of Consumption Tax could result in one-

off inflation thereby increasing cost of business operation and higher costs of living.

On the other hand, Consumption tax will encourage savings and at the same time check unnecessary or compulsive consumption.

Any introduction of consumption tax should be accompanied by the reduction in personal and corporate tax as well as other indirect taxes.

B. Reduction of Personal Tax Burden

In the IT age, intellectual property will become an important trade commodity and it is comparatively easier for individuals to accumulate wealth. In the developed country, individuals leave their home countries due to high personal tax burden. To attract potential investors and skilled labour, the government must be in the long run reduce the tax rates and increase the tax bands on chargeable income of individuals.

In addition, low income tax rates for individuals means increase disposable income. Once the market aggregate demand is developed, it will provide the impetus to economic growth.

Therefore, we suggest that the introduction of Consumption Tax must be accompanied with simultaneous reduction of income tax rates, customs and excise duties. In addition, the Consumption tax rate should be as low as possible, say about 3%. This will ease the inflationary pressure.

C. Interest on Underpayment and Overpayment of Tax

Currently, if taxpayers not paying their taxes, penalty of (10% + 5%) will be imposed irrespective of their overdue period. The system does not incorporate the mechanism to encourage rectification of late payment. It does not distinguish a good taxpayer who tries to pay once he discovers his mistake, from s persistent delinquent taxpayer. In fact, once late payment has occurred, the system encourage a taxpayer to pay as late as possible since the penalty does not increase with time. Similarly the IRB should pay interest if refunds for overpayment of tax is not made on time.

We therefore suggest that interest be charged on tax overpaid/underpaid at market rate in place of penalty system.

2.6 Supplementary Measures to Reinvigorate Financial sectors

A. Health and medical benefits for SOCSO contributors

In view of the ageing trend of our population and the low payout by SOCSO, we propose that the coverage provided by SOCSO should be extended to include medical benefits. This will ease the burden of the poor once our medical care system is corporatised.

3. Strengthening Economic Resilience

Malaysia is a small country and therefore our resources are not comparable to Big Economies like the United States and Japan. To improve our economic resilience, we must be efficiency oriented. In addition, we have to fully realize the potential of our resources and develop our expertise and market niche. Weak local service industry has led to the current account deficit in our national budget. In this context, we suggest the following:

3.1 Developing Strategic Industries

A. Shipping Industries

Malaysian has been promoting the local shipping industries for many years with little results. This is partly because shipping is a capital intensive industry. We need foreign investment to participate in the industry. Currently the incentive for shipping industry is quite restrictive. It is very difficult for a foreigner to incur a huge capital without at the same time having full control over the company's affair. It is suggested that the incentive be extended to foreigners.

It may be feasible to differentiate between Malaysian Waters and International Waters. We proposed the current controlled shipping companies solely for the transportation of cargo and

passengers in the international waters may qualify for tax exemption on income derived from letting out of ship on voyage or time charter.

In addition, the definition of 'Malaysian ship' may needs to be reviewed. Currently, cruise is not considered a ship. Tour companies will therefore register their cruise in other country such as Singapore.

B. Information Technology Industry

a. Incentive for Developing IT Infrastructure

To obtain an edge in the IT industry, Government may consider providing customized incentives to residents for developing E-Commerce infrastructure.

We suggest that royalty license fee received by residents from information technology may be taxed at reduced rate or exempt from income tax. In addition, Paragraph 52 of Schedule 6 to the Income Tax Act 1967 should be amended to include exemption on income from royalty.

b. Promoting MSC

We suggest that the pioneer profit of MSC companies be exempted at the adjusted income stage and costs of software be allowed to claim Investment tax Allowance.

C. Education Industry

Due to limited places in the local higher institutions of learning, a significant number of Malaysians continue their studies overseas. This has contributed to substantial outflow of funds. In view of high student population density in the surrounding countries and the comparative low cost of living in Malaysia, Malaysia should develop the potential as being a regional educational center. This would not only reduce outflow of funds but also increase inflow of funds. In this context, we suggest that

a. Double Reduction of Professional Training

Currently costs incurred by companies and firms for sending their staff to participate in approved training courses, whether conducted in-house or externally, are allowed to claim for grants from the Human Resource Development Fund. This policy should be further strengthened to promote our education industry and also improve the quality of our human resource supply and thus enhance our competitiveness.

We suggest that the scope of approved training courses be extended to accounting, taxation. law, and other technical services, and not restricted to scientific, technological or vocational courses only. In addition, professional bodies should be recognised as approved training institutions.

b. Deduction of Course Fees for Individuals

To promote a learning society, we suggest that the government allow fees incurred by individuals for acquiring and updating any skills and knowledge as deductions against their income. This also complements the Institutes' suggestion made in (i) above

We suggest that professional development courses organized by professional bodies for their members be recognized as approved training courses and the course fees and other expenses incurred by individuals be allowed to deduct against their income.

c. Personal Relief for Educational Insurance

Currently, education and medical insurance premiums are allowed deduction under Section 49(1B) up to a maximum of RM2,000 annually. To promote a learning society, relief for educational insurance premium should be enhanced. This will ensure our younger generation will have the means for better education and thus improve our economic competitive power. In can also help to develop education industry in the long run and generate the skilled labour as well as promote the insurance industry.

We suggest that deduction for educational insurance premium be increased to RM5,000 per annum.

4. Enhance Competitiveness

To improve our competitiveness in quality, pricing and marketing strategy, we have to improve our efficiency in every aspect.

4.1 To Promote Malaysia's International Offshore Financial center

Netherlands has adopted a strategy called participation exemption to attract international funds to use Netherlands as a offshore financial center. In brief, tax relief or exemption is accorded or dividend distribution made by a resident company to its holding company, provided the latter holds a requisite percentage of the former's equity for a minimum period as may be determined by the authority.

We suggest that Malaysia adopt a similar approach.

4.2 Bonus Restriction

Staff need to be motivated for their efforts. The original intention of introducing the provision to control spending so as to keep inflation rate low no longer exists. In fact, many employers are already curtailing excessive bonuses in face of economic stringency.

We suggest that bonus restriction be removed to improved efficiency.

4.3 Group relief

Many countries treat group companies as entity for tax purposes. As such group relief is recognised. Currently, our group relief is very restricted and available to specific agricultural sectors.

We proposed that Malaysia adopt the same approach.

4.4 Service Tax on Management Services

It is the government policy to enhance efficiency and competitiveness of Malaysian export in the global company. Firms and companies are encourage to specialize and reduce costs. Incentives and Assistance are given to firms and companies to restructure for greater efficiency and hence competitiveness. It contradicts the objective of all these economic policies to levy service tax on companies which centralise their management services and activities so as to achieve greater efficiency.

5. Other Reforms

5.1 Simplification of Capital Allowance Computation

To simplify the claiming of capital allowance and reduce the cost and time to both taxpayers and IRB, we suggest that the depreciation of qualifying assets provided by the taxpayers be accepted as capital allowance claimed. In addition, qualifying assets costing RM1,000 or below be allow to be written off immediately.

5.2 Increase of Qualifying expenditure for Motor Vehicles

At present, qualifying expenditure of motor vehicle is restricted to RM50,000 if it is not licensed under commercial transportation of goods or passengers. The restriction was last reviewed in 1991. Since then, cost of motor vehicles has gone up significantly. To promote motor vehicle industry, we suggest that the restriction on qualifying expenditure in respect of motor vehicle under paragraph 2(2) of Schedule 3 to the Income Tax Act 1967 be increased from RM50,000 to RM100,000.

APPENDIX I

TAX REFORMS FOR INDIVIDUALS

1. Exemption for Compensation for Loss of Employment

Presently, compensation for Loss of employment is exempted from income tax in following manner:

a) In full if the Director general is satisfied that the payment is made on account of loss of employment due to ill health, or

b) In the case of payment made in connection with a period of employment with the same employer or with companies in the same group, in respect of an amount calculated by multiplying the sum of RM4,000 by the number of completed years of service with that employer or those companies.

The provision has been introduced since 1986. at that time a person having only annual employment income of RM6,300 will not have to pay tax. Since then, the country has undergone a long period of significant economy growth. Consequently, the cost of living has increased tremendously. However the quantum of the personal relief has not been reviewed since it was introduced in 1980.

Currently, the threshold for staying outside the tax net is RM12,900 due to rebate and the lowering of individual tax rates. Therefore t is timely for the government to review the threshold for exemption as this could be one way by which the Government can provide positive assistance to those who lost their jobs.

PROPOSAL

It is proposed that the amount qualifying for exemption under item (b) be increased to RM12,000 for every completed year of service with the same employer or with companies with the same group.

2. A case for Reduction of Individuals Tax rates

Complementary to the Macro Economic Policy

(i) In line with the expansionary budget, this proposal will be alleviate to a certain extent, SMIs for the increase cost of business operations and individuals for the rising costs of living which has accumulated all these years.

(ii) Reduction of tax brackets from the existing 9 to 6 will help to eliminate "bracket creep" brought about by rising income as a result of rising costs. Individuals are shifting gradually to a higher tax bracket despite the real level of income (i.e. their purchasing power) remaining unchanged or in some cases deteriorated, resulting in imbalanced contribution made by individuals on direct taxes.

(iii) Current personal relief was introduced almost 20 years ago. It is difficult to maintain one's living costs at that level now. Increase in personal relief to RM10,000 will help to minimise the tax burden to lower-middle income groups. At the same time, this will relieve them of the need to submit tax returns which in turn reduce the administrative work load for the Inland Revenue Board ('IRB').

(iv) Strategy for the Development of Human Resources

In recent years the government had introduce a number of incentives aimed at promoting growth of the services sector

amongst which are incentives for:

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

To open up the Malaysian services sector and make it more competitive, supply up skilled labour and expertise can be a critical constraints. Gearing up the education industry to produce the required skills is a long time solution. In this respect, we have suggested some incentives and measures to promote our education industry, such as increasing relief on premium for education insurance, deduction for training expenses for professionals, etc.

In medium term, an effective way of dealing with the problem is to remove restrictions on expatriate employment recognizing the need to free potential investors from the constraint posed by shortage of skilled manpower especially in relation to the concept of the MSC, one of the incentives granted to IPCs and companies granted MSC status is the freedom to bring in unrestricted number of expatriates into the country, according to the needs of the establishment. This certainly a right step to take in dealing with the lack of skilled manpower.

In the short-term of relaxation of regulations may be augmented by making Malaysia's tax regime more attractive for skilled employees to relocate. The policy may provide the impetus for the take-off of our service industry. There has been a resiting of certain types of businesses and personnel from places like Hong Kong, Tokyo to reduce operation costs. This market is up for grabs but the opportunity will not last forever. We have to get market share as soon as possible.

There is a case for reviewing existing tax rates and restructuring the tax brackets for individuals in order to make Malaysia more competitive and attractive vis-a-vis our neighbouring countries which are also competing for foreign workers, especially Singapore. The proposal would also help to ease the excess supply of office space in the country.

(v) Financial Implications

Historically, improved tax administration and collection efficiency has generated increases revenue collection despite reduction in tax rates and provision of other tax incentives. As our economy is just recovering from the financial crisis and we need funds to finance an expansionary budget, the government is concerned of the impact on the reduction of tax on revenue collection.

The lowering of tax rates and widening of tax bands will not necessarily reduce the total revenue from direct taxation. Such measures will result in increase aggregate demand and encourage consumption, which in turn will provide incentives for people to produce more and to work harder. Consequently, the government may collect more tax than before.

Nevertheless, we suggest that such reduction should be introduced in packages simultaneously with other tax reforms as recommended in our memorandum to ensure smooth transition. The approach in short is to increase the tax base to maintain if not increase revenue collection, at the same time contain the inflationary pressure.

(vi) Improving Tax Administration Efficiency

Increasing the level of non taxable threshold to RM10,000 will also minimize the tax burden of lower income groups and relieve the IRB of the burden of processing returns for this category of taxpayers. This will release the IRB manpower for more costs effective assignments such as tax audits and investigation, preparation of self-assessment

reforms, revenue collections, etc. as such, partially relieve IRB from the manpower shortage and enhance operational efficiency of the IRB which, together with the widening of the tax base, will ensure sufficient revenue collections to finance the macro economic project.

PROPOSAL

In view of the above, we propose as below:

* the personal relief be increases to RM10,000
* the tax brackets be streamlined from the existing 9 to 6
* the non-taxable threshold be raised to RM10,000
* the maximum tax rate be reduced to 28%

The proposed structure is shown in Table A followed:

TABLE A

Malaysian income Tax Table for Individuals Proposed Tax Rates for the Year of Assessment 2000

	CURRENT		PROPOSED		
	Chargeable Income RM	Rate %	Income Tax Payable RM	Rate %	Income Tax Payable RM
On the first	2,500		0	0	0
On the next	2,500	2	50	0	0
On the first	5,000		50		0
On the next	5,000	4	200	0	0
On the first	10,000		250		0
On the next	10,000	6	600	5	500
On the first	20,000		850		500
On the next	15,000	10	1500	5	750
On the first	35,000		2350		1,250
On the next	15,000	16	240	10	1,500
On the first	50,000		4,750		2,750
On the next	20,000	21	4200	15	3,000
On the first	70,000		8,950		5,750
On the next	30,000	26	7800	20	6,000
On the first	100,000		16,750		11,750
On the next	50,000	29	14,500	25	12,500
On the first	150,000	30	31,250		24,250
On the next	100,000		30,000	25	25,000
On the first On amount exceeding 250,000	RM250,000	30	61,250	28	49,250

Appendix II

Tax Reforms On Sales Tax And Service Tax (cont)

PROPOSAL

It is proposed that the relevant Acts be amneded to allow the taxable person to claim forbad debts which have become uncollectible. Further it is proposed that the concession given to profession firms to pay service tax upon receipt of payments be restored.

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

Appendix III

Health And Medical Benefits For SOCSO Contributors

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

The 1995 Annual Report of SOCSO showed that SOCSO's Fund stood RM4,464 million. Income for 1995 amounted to RM950.7 million, of which 90.8% or RM673.0 million was from employer adn employee contribution, while RM274.0 million or 28.8% came from investment returns. In 1995, contribution had increased by RM99.3 million of 17.3%. By comparison, the amount of benefit payments for 1995 totaled only RM289.0 million. This represented an increase of about RM75.5 million (or 36.4%) over the previous year.

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

Presently, cash and medical benefits payable by SOCSO are confined to injuries, disablement or death related to employment or contraction or 'occupational diseases' which are specified in the Employee's Social Security Act, 1969. SOCSO's 1999 Annual Report disclosed that the possibility of introducing new benefits are being studied. The schemes being studied include:

- Monthly Insurance Scheme
- Sickness Insurance Scheme
- Family Allowance Insurance Scheme

PROPOSAL

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

The greater participation of SOCSO in the insurance industry may also provide the thrust for the local re-insurance industry.

Appendix IV

Simplification Of Capital Allowance Computation

1. Simplifying Capital Allowance Computation

i) **Rates of Capital Allowances**

Currently, the prescribed rates of annual allowances on qualifying plant and machinery ranges from 6% to 20%, depending on the type of asset and the nature of the industry. Hoever, it is thoght that the company itself should know better how long as asset can be used and that the adoption of a particular depreciation treatment is governed by International Accounting Standard No. 4 and other Standards. It is therefore not easy for the company to change the depreciation treatment as they lie. In any case, the claim will not casue any real loss as it is only the timing of the the claim.

PROPOSAL

In order to simplify the calculation of capital allowances, it is proposed to abolish the different rates of capital allowances and allow the depreciation claimed as capital allowance, as in Japan.

Notwithstanding the above, the special rates granted for computers, related software, information technology and environmental protection equipment being an incentive, should remain.

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

Currently, all assets, regardless of the cost, are disallowed as revenue deductions and capital allowances are given annually based on the rates applicable to the respective assets. it is rather onerous and tedious for tax purposes to capitalise and maintain records and reconciliations of all items of assets which can be numerous and voluminous.

In some countries such as Australia and New Zealand, assets of less than a threshold amount will be allowed to be written of immediately. The expensing of capital expenditure will not involve any overall loss of revenue to the government as it is merely a difference of timing in granting the allowances. This would however, save much time and cost of the businessmen in terms of record keeping and the preparation of the cpaital allowances schedule.

PROPOSAL

In order to ease the burden of record keeping and to simplify the calculation of capital allowances, it is proposed that assets costing a certain amount, say, RM1,000 or less should be allowed to be written off immediately.

2. Increase Of Qualifying Expenditure For Motor Vehicels

The qualifying expenditure in respect of a motor vehicle which is not licensed for commercial transportation of goods or passengers is currently limited to a maximum of RM50,000. This limit was effective from the year of assessment 1991, when a 1.6 litre to 2.0 litre car could be purchased at around RM50,000 to RM60,000. However, the price of a similar car today has increased substantially to above RM100,000. In view of this, the maximum qualifying expenditure should be revised.

PROPOSAL

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

The following is an extraction of the minutes of meeting of the Consultative Panel between the Royal Customs and Excise Department and Private Sector which was held on 14 May, 1999.

THE MALAYSIAN ROYAL CUSTOMS AND EXCISE DEPARTMENT

Minutes of Meeting
Customs/Private Consultative Panel 1/99

PART II

MATTERS ARISING

1. Request the department to consider Bumiputra allocation from 51% in all categories to 30 % in line with the Bumiputra allocation of 30% for forwarding agents.

Decision

The Department has not receive any response from the Treasury regarding the above matter. Follow-up letter had been forwarded but has also not received any decision.

Action : Customs Division

2. Item 91 of the Sales Tax (Exemption) Order 1980 allows for traders to acquire taxable goods from licensed manufacturers free of tax subject to the conditions imposed. One of the conditions is that these goods must be exported within 6 months (or further period as may be allowed by the Director General) from the date of payment of Sales tax. The Sales Tax Act 1972 was amended during the 1997 Budget to deem Licensed Manufacturing Warehouse (LMW) as being outside the country, and consequently all LMW's manufacturing taxable goods were delicensed by the Sales Tax Authority. The impact Of this deregistration was the loss in the use of the CJ5, USA and CJ5B facilities.

Decision

Trading companies have been exempted from Sales Tax under the Sales Tax Order (Exemption) 1980 Schedule B item 28A for purchases and sales of raw materials/components to Licenced Manufacturers Warehouse (LMW) effective 10 December 1998. With this exemption, Trading Companies and LMW can continue enjoying the facility like the CJ No. 5A as before this.

For Information

3. The sales tax to be paid for local sales by LMW/FIZ companies are based on the full import duty 'payable' although the actual import duty 'paid' is at a lower rate. FMM request Customs to re-look and review the current taxation policy on sales tax imposed on LMW/FIZ companies as it would affect the competitiveness of these companies in the market.

Decision

The Y.B. Minister of Finance has agreed to exempt a portion of the Sales Tax on local sales of LMW and FTZ effective 18 March 1999. Determining the value of Sales for local sales concerned is currently to take into consideration the actual paid import duties and not the import duties which is payable.

For Information

4. Arising from Budget 1997, LMW is treated as an area located outside Malaysia and as such, sales from PCA to LMW should he considered as export sales. However, the

Sales Tax Authority does not allow the use of item 91 of the Sales Tax (Exemption) Order 1980 for sales mode to LMW companies with the reason that no Custom No. 2 (K2) form is produced to prove exportation. This had placed vendors in a disadvantageous position as no tax exemption or drawback claim would be allowed under these circumstances.

Decision

Trading companies have been exempted from Sales Tax under the Sales Tax Order (Exemption) 1980 Schedule B Item 28A for the purchase and sales of row materials/component to Licenced Manufacturing Warehouses (LMW) effective 10 December 1998. With the exemption, the trading companies and LMW continue enjoying facilities such as CJ No. 5A as before this.

For Information

5. In the 1997 Budget, a new Section 2B was inserted to deem licensed Warehouse and Licensed Manufacturing Warehouse (LMW) as a place outside Malaysia. After the amendment, LMW is no longer required to be licensed under the STA, 1972 and therefore is not eligible for CJ5 facility. In this case, the USA facility available to a trader is also no longer applicable. The sales tax authorities disallow the use of Item 91 of the Sales Tax (Exemption) Order 1980 for the above arrangement on the ground that there is no Customs No. 2 to substantiate export and thus placed traders in dilemma.

Decision

Trading companies have been exempted from sales tax under the Sales Tax Order (Exemption) 1980 schedule item 28A for the purchase and sales of row materials/ components to Licenced Manufacturing Warehouses (LMW) effective 10 December 1998. With the exemption, the trading companies and GPB enjoys directly the facilities such as CJ No. 5 as before this.

For Information

6. Before the 1997 Budget, Item 104 of the Sales Tax (Exemption) Order 1980 provides for exemption of sales fox on goods partially manufactured in a LMW which is sent to a manufacturer in PCA for further manufacture under a subcontracting arrangement. In this case, the conditions of exemption, amongst others, require that the LMW be licensed under the STA, 1972 whereas the said manufacturer in PCA is not licensed under STA, 1972. As a LMW is not licensed under STA, 1972 offer 25 October 1996, Item 104 cannot be utilized.

Decision

Item 104 of Sales Tax Order (Exemption) 1980 has been cancelled on 10 December 1998.With the cancellation, sub-contract work between LMW manufacturers in the Principal Customs Area (PCA) can be implemented administratively, that is by Industrial Branch, during processing and approving the import exemption duties under Item 144 Customs Duties Order (Exemption) 1988. Sales Tax exemption does not require to be claimed upon because LMW Manufacturers are exempted on row materials through Item 28 Sales Tax Order (Exemption) 1980.

For Information

7. Limitation On The Number of Forwarders - "2 forwarder concept" impede companies in doing business, Some companies may require the services of more than 2 forwarders who may have expertise in a specific field. Section 90 of The Customs Act 1967 (Control of Agents) is silent on the number of agents to be appointed by companies. It is therefore suggested that such restriction be reviewed so as to facilitate businesses.

Discussion Details:

The Chairman stresses that

limiting the number of forwarding agents was mode based on requests made by the private sector after the survey. Based on this, he hoped that a decision can be achieved with regards to the actual number of forwarding agents required by any one importer at any one time.

AFAM representative mentions that for air freight mode, it is different compared with sea freight mode because only one forwarding agent is required. This is because it is tied by the regulations issued by MAS and KLAS.

Nevertheless, FMFF representative requests standardising the stated regulations whereby as a whole each importer requires two forwarding agents for each mode of transportation.

In relation to this, AFAM representative wish to know whether Customs Department con identify electronically, the forwarding agent who is allowed to represent any of the importers or to carry out anyone task.

SISMAP Director informs that through the system which is to be used in SW Phase 2, the identity of the forwarding agent representing anyone of the importer or carries out certain task can be qualified.

Decision:

Datuk Chairman concludes that the current practice be retained. Nevertheless, should any company require the services of more than two forwarding agents, application can be forwarded to the Customs Department and the department is prepared to consider positively the said application.

For Information

8. Single LMW Licence For All Companies and Subsidiaries Operating Within Malaysia. At present, LMW licence holders are required to apply for a separate set of licence if they have another plant (branch) located at a different state. FMM propose to Customs to allow the use of a single LMW licence for companies and their branches, irrespective of the states these branches are located. As these branches ore operating under the some management and share the resources of the main plant, a single licence would help reduce the administrative burden for the licence holder. In addition, branches may be set-up for certain manufacturing processes such as produce certain parts for the main plant and as such, would not be involved in importing row materials or direct export. With the issuance of a single licence, a more efficient working environment could be created whereby all dealings with Customs would be the responsibility of the main plant.

Decision:

The Department is studying the request as above and will report at the next meeting. FMM representative announces that FMM is prepared to provide information or further clarification should it be required.

Action : Customs Division

PART III

MATTERS DISCUSSED

1. Requests the Selective Clearance System (SSPT) Facility for Multinational Companies (MNC) which is currently practiced at Port Klang he extended nationwide.

   Proposal from Federation of Freight Forwarders Malaysia (FMFF)

   Decision

   The Department agrees with the above requests.

   For Information

2. Request For Proper Customs Vetting/Screening Procedures For Application

For Customs Licence To Encure Not Only Bona Fide Agents But Also Competent Ones.

Proposal from Federation of Freight Forwarders Malaysia (FMFF)

Discussion Details

The Director of Customs Division, clarifies that the screening process on Customs Agents is still ongoing - only the interview process is exempted at the moment.

FMFF representative made known that this proposal arises from newspaper reports which said the Customs Department will relax the conditions for the Customs Licence Application.

Datuk Chairman suggests that the private sector representatives always gets clarification from the Department and also from the State Customs Directors on issues which arises because sometimes the Newspaper Reports can be misleading.

Decision

The Screening Procedure on Customs Licence Applications is solidly ready to ensure the appointed Customs agents are competent and bona fide.

For Information

3. Requests the Minutes of the Consultative Panel Meeting be prepared in Bahasa Malaysia and English.

Proposal from Air Freight Agents Association Malaysia (AFAM)

Decision

The Meeting agrees with the above proposed. The Secretariat will requests assistance from the private sector representative should the situation requires. Datuk Chairman also requests the private sector cooperation to send letters in bilanguage as to fulfil the government` orders where all correspondence with government agencies must be in Bahasa Malaysia.

Action : Meeting Secretariat

4. Propose To Increase Penalties For Fraud/Abusing of Facilities Provide By Government Authorities

Proposal from Air Freight Agents Association Malaysia (AFAM)

Discussion Details

The Preventive Division Director is of the opinion that the current penalty, under Section 131 (A) of the Customs Act 1967 is adequate, whereby the Director General of Customs can compound not less than twice the duty value/tax and not more than 10 times the duty value/tax concerned.

The Deputy Director-General of Customs (Preventive) also says that the imposed penalty by the courts is sufficiently high. As an example, offences under Section 135 (1)(i) Customs Act has a minimum penalty of RM10,000.00 or 10 times the amounted tax/value whichever is lower and a maximum of 20 times tax or RM10,000.00 whichever is higher. Nevertheless the maximum compound rate is RM5,000.00 under Section 131 (1) of the Customs Act can be considered if the need arises.

The AFAM representative explains that he actually referred to common cases, which are handled by assessing officers at KLIA where the penalty/ compound imposed are not uniform and not high enough to prevent occurrence/ recurrent offences or abuse of facilities provided by the Customs Department.

Decision

The penalty rate for abuse/ misuse of facilities provided by the Customs Department is sufficient and does not required to be reviewed at this moment. The cooperation of the private sector is needed to report cases involving abuse/ misuse of facilities to the Preventive Division as to allow correct measures to be taken.

For Information

5. Requests for Written Guidelines on Procedure OF Checking By Customs Preventive

Proposal by Air Freight Agents Association Malaysia (AFAM)

Discussion Details

AFAM representative made known the problem mentioned above arose because of truck thefts/goods carried by trucks is increasing especially a great number of forwarding agents trucks were stopped with no road blocks by those claimed to be from the Customs Department but non of them were wearing the Customs uniform or showed their identity.

Datuk Chairman explains that for every road block conducted by Customs authorities must involved at least one Customs officer in uniform. However, it is different with chasing mission, conducted by Customs Preventive authorities, under normal circumstances, the members involved do not use uniform.

Decision :

The Department will prepare a written guideline as requested.

Action : Preventive Division

6. Application and Renewal of Customs Licence

Proposal by Air Freight Agents Association Malaysia (AFAM)

Discussion Details

Item 5.10 Application Forms of Forwarding Agents stipulates that all applicants must state whether they are members of FMFF and state the reason should they are not FMFF members. In connection with this, the AFAM representative suggests that applicant need only state the association he is registered and accompanies a copy of the certificate membership as proof.

FMFF representative states that they do not have any objections towards the concerned proposal.

Decision

The above proposal is agreed and the Application Customs Licence will accommodate the suggested proposal.

Action : Customs Division

7. Appointment and Approving Customs Agents

Proposal by Air Freight Agents Association Malaysia (AFAM)

Discussion Details

Customs agents are required to provide the latter of appointment from their customer and need to wait approval from Customs authorities before they can practice as Customs agents for their respective customer. In relation to this, AFAM's representative requests that the Customs agents that have been appointed by their customers be allowed to act as representing their customers without waiting for approval from the Customs authorities.

Director of Customs Division explains that the approval from the Customs authorities is required based on the principle that anyone company can only appoint the number of agents at any time in accordance to the number stipulated.

FMFF representative acknowledges that in Johor Bahru they did not face any problem as the above because approval from the Customs authorities is easy and fast in acquiring.

AFAM representative mentions that the problem of acquiring approval from the Customs authorities in KLIA is due to the factor of distance, whereby approval has to be obtained from the State Customs Director office at Pusat Border Damansara, Kuala Lumpur whereas importation is carried out at KLIA, Sepang.

Decision

The State Customs Director of Federal Territory will be informed to delegate the powers to approve new Customs agents

applications to the Head of Customs Station, KLIA.

Action : Customs Division

8. **Lodgement of Bank Guarantee With Customs As A Security For Petroleum Products In Bond and Imported**

Proposal by MICCI (Malaysian International Chamber of Commerce and Industry)

Discussion Details

Since 1 March 1998, Petroleum companies are required to lodge bank guarantees based on the largest amount of duty and the balance in the form of general bonds. This is to guarantee duty payment on petroleum products brought from oil refineries or licenced petroleum warehouse is received in accordance within 10 days of the following month.

Eventhough only one bank guarantee is prepared, the commission paid to the bank is high. In relation to this MICCI representative on behalf of the *petroleum companies requests* the bank guarantee be changed with general bond as security

Senior Assistant Director of Customs, Petroleum Branch explains that the Customs Department has provided numerous leeway, in which initially, the guaranteed requirement in the form of cash deposit of 10% from the anticipated tax and the balance (90%) in the form of Bank Guarantee.

Datuk Chairman agrees with the mentioned statement and added that the Bank Guarantee is highly important for it guarantees the payment of duties on petroleum products that has passed through the Customs Control.

Decision

The Department cannot approve on the proposal as of the above for the moment.

For Information

9. **Duty payment at Port Klang**

Proposal by MICCI (Malaysian International Chamber of Commerce and Industry)

Discussion Details:

Private sector representative suggests that Customs duties payment at Port Klang can be made at any port. For example, Customs Forms registered at Northport but duties can be paid at Westport.

Director of Customs Division explains that the matter cannot be implemented in the existing system (SMK Phase 1), whereby facilities to pay duties/ tax at the different responsible centre other than the responsible centre where the pledge form was not prepared. Nevertheless, this matter will be taken into consideration in the course of improving the system in the future.

Decision

The above matter will be reported at the next meeting.

Action . Customs Division

IV. OTHER MATTERS

Issues on Management and Service Tax

Discussion Details:-

Deputy Chairman raised the issue on management fees and tax services which had been discussed at the last meeting.

Datuk Chairman states that the Treasury had concluded that the provision of management services is subject to Service Tax and covers rendered management services to group companies under centred management.

FMM representative requests the Department reopen discussion with the Treasury because as the enforcer of the law and regulation, definitely the Department can discuss with regards to Laws and Regulations that need to be implemented from time to time.

MACPA representative requests

the Department prepare definitions or guide lines concerning management services. Deputy Chairman who represents MICCI agrees with MACPA representative where definition for management services is wide and because of that it is wise to have a specific definition.

Senior Assistant Director of Customs, Service Tax Branch, informs that the Department had produced guideline concerning service tax from time to time.

Decision

Datuk Chairman requests MACPA or MICCI prepare a working paper concerning Definitions and issues/ management services problem from the point of view of the private sector to be forwarded to the Deportment to be brought for discussion with the Treasury authorities.

CHAIRMAN'S CLOSING SPEECH

The Honourable Datuk Chairman thanked all those present and had contributed their views in this Meeting. He apologies should there be any mistakes and wrongs because it did not manage to fulfil everybody's wishes. He acknowledges there were a number of proposals which could not be resolved immediately because it required further studies and will be resolved later. The same were also for those proposals which were sent but were not discussed because it did not involve all parties. Nevertheless, all proposals or questions will be answered by the respective parties directly to those who sent the proposals/ questions concerned.

He further invites the Deputy Chairman to say a few words.

The Deputy Chairman also thanked to all parties at this panel meeting which was very useful and appreciates the positive attitude of the Department in overcoming problems that arose. He later hands over to Datuk Chairman to end the meeting.

Datuk Chairman wished thank you and safe journey to their respective places and announces that the panel will once again meet at the end of this year, that is after the tabling of the year 2000 Budget.

(AZIS BIN YACUB)
Secretary
Customs/Private Sector Consultative Panel
Royal Customs and Excise Headquarters
Malaysia

(DATUK AHMAD PADZLI MOHYIDDIN)
Chairman
Customs Private Sector Consultative Panel
Royal Customs and Excise Headquarters
Malaysia

Circular No. 8/99

1. **Application Forms for claiming Allowance for Increased Export [Form BT/A1E/1/99] and Double Deduction on Advertising Expenditure on Malaysian Brand Goods [Form DD/JT(BT1/1999)]**

Following the gazette of the Income Tax (Allowance for Increased Exports) Rules 1999 [P.U. (A) 1281 and the Income Tax (Deduction for Advertising Expenditure on Malaysian Brand Name Goods) Rules 1999 [P.U. (A) 129], the Technical Division of Inland Revenue Board (IRB) had designed a draft application form for each incentive. The Institute was invited to comment on the drafts and submitted its comments on 28 May 1999. Attached are copies of the finalised application forms by IRB.

2. **1999 GDP Growth Rates furnished by Treasury For the Purpose Of Claims for Reinvestment Allowance at 100% Statutory Income**

Following the amendment by Finance (No. 2) Act 1999, companies are no longer required to "achieve the level of productivity as prescribed by the Minister of Finance" in order to be eligible for claiming Reinvestment Allowance, However, companies wishing to claim maximum Reinvestment Allowance against 100% Statutory Income must still achieve that level of productivity, i.e. the companies are required to show that the process efficiency has increased by at least the same rate as the growth rate of the particular sub-sector.

Attached is a list of growth rates for each sub-sector for the years of assessment 1998 and 1999. (Appendix 1)

3. **Payment of Dividend Out of 1999 Income**

Since the announcement of tax waiver in the last Budget, members have been enquiring on issues relating to the distribution of exempt dividend out of the income on which income tax is waived. The Secretariat had since then been liaising with IRB on this issue. The IRB has recently responded to our enquiry in writing. However, as there could be a discrepancy in the interpretation of its reply, we are in the process of seeking further clarification.

MIA/MIT 2000 Budget Activities

The 2000 Budget Hotline service by MIA/MIT was opened to members of the public on Saturday, 30 October 1999 a day after the 2000 Budget was presented by the Honourable Minister of Finance, YAB Tun Daim Zainuddin.

The hotline operated from 9.00 am to 12.00 pm. About 40 enquiries were received by 8 hotline handlers from callers sought clarification on certain aspects of the Budget that was announced. Most callers expressesd satisfaction with the 2000 Budget and said that it was a very positive one.

MIA/MIT had worked very closely with the TV station, NTV7 on the Budget Day activities. A panel discussion on budget, pre-budget and post-budget on the budget day, Friday, 29 October 1999.

An exclusive live interview by NTV7 was held immediately after the budget which was presented in several languages such as Bahasa Melayu, English and Mandarin. The Institute was represented by Council members of the MIA and MIT.

Pre-Budget Activities

Two weeks before the budget day MIA/MIT had organised a Pre-Budget Press Conference and which was held at the MIA office.

During the Press Conference, proposals were presented to Ministry of Finance (MOF) elaborated by the MIA/MIT representatives. Among the proposals covered were

- Restructuring of Companies
- Small and Medium Size Industries
- The Budget and E-Commerce
- The Financial and Construction Sector.

The MIA/MIT representatives present were Mr. Lee Yat Kong, MIA Branch Chairman/MIT Council Member, Mr Quah Poh Keat, Mr. Harpal Singh Dhillion and Mr. Veerinderjeet Singh.

MIT Professional Examination

CALENDAR FOR 2000

January 1	Annual Subscription for 2000 payable.
February 18	Release of the 1999 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 Year 2000 *without penalty* (RM50).
April 30	Last date for payment of annual subscription for Year 2000 *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 Examination Department, before 15 October 2000.
November 30	Despatch of Examination Notification Letter.
December (dates to be confirmed)	MIT Examination.

PILOT PAPERS , DECEMBER 1995, 1996 , 1997 & 1998 EXAMINATIONS QUESTIONS AND ANSWERS BOOKLET ORDER FORM

To:

Education Officer
Education Department (MIT)
Dewan Akauntan
No. 2 Jalan Tun Sambanthan 3
Brickfields
50470 Kuala Lumpur

Full Name Mr/Mrs/Miss/Ms: _____

Address: _____

_____ Student Reg. No: _____

MIT REGISTERED STUDENTS & MIT MEMBERS

YEAR	COST PER LEVEL					
	Level I/Foundation		Level II/Intermediate		Level III/Final	
1998 EXAMINATIONS BOOKLETS	RM5.00		RM6.00		RM 11.00	
1997 EXAMINATIONS BOOKLETS	RM5.00		RM6.00		RM11.00	
1996 EXAMINATIONS BOOKLETS	RM5.00		RM6.00		RM11.00	
1995 EXAMINATIONS BOOKLETS	RM5.00		RM6.00		RM 5.50	
PILOT PAPERS BOOKLETS	RM5.00		RM6.00		RM11.00	

NON-MIT REGISTERED STUDENTS & NON-MIT MEMBERS

YEAR	COST PER LEVEL					
	Level I/Foundation		Level II/Intermediate		Level III/Final	
1998 EXAMINATIONS BOOKLETS	RM7.00		RM8.00		RM13.00	
1997 EXAMINATIONS BOOKLETS	RM7.00		RM8.00		RM13.00	
1996 EXAMINATIONS BOOKLETS	RM7.00		RM8.00		RM13.00	
1995 EXAMINATIONS BOOKLETS	RM7.00		RM8.00		RM 7.50	
PILOT PAPERS BOOKLETS	RM7.00		RM8.00		RM13.00	

Please tick box(es) to indicate your order.

I enclose Cheque/PO/MO for RM _____ (including RM1.00 for postage) payable to Malaysian Institute of Taxation.

Student's Signature: _____ Date: _____

The following persons have been admitted as associate members of the Institute as at 28 September 1999.

Name	Membership No.
LIM SAY LEONG	1622
LOW HOOI HONG	1623
LOO THIN TUCK	1624
ONG TIONG HUN @ ONG TEONG HAN	1625
RAJAGOPAL A/L NADASSAN	1626
SELVAMANIAM A/L S. THURAIRAJAH	1627
SUCHITRA A/P S MAHENDRARAJ	1628
YEOW CHEE KONG	1629
YEE HUN LEEK	1630
WONG YUK MOU	1631
HOH CHEE KEE	1632
TEH LAY GNOH	1633
RIZDUAN BIN JOHARI	1634
GEORGE THOMAS	1635
YEOH WEE LEE	1636
WONG KITT MEIH	1637
FREDDY LEE SZE HUA	1638
TAN CHIA CHUAN	1639
TAN HING HOCK	1640
MOHD ALI BIN ABAS	1641

The following persons have been admitted as fellow members of the Institute as at 28 September 1999.

Name	Membership No.
CHEW SOON HOE	446
SU YU JIT	665

MEMBERSHIP STATUS OF MIT AS AT 28 SEPTEMBER 1999

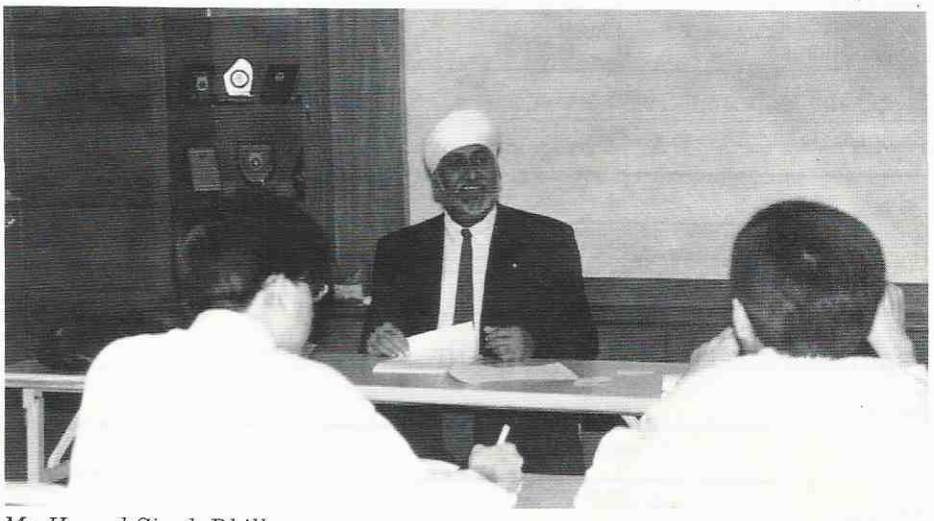
Honorory Fellows	7
Fellows Members*	394
Associate Members*	1221
	1615

*** Fellow and Associate Members**

Public Accountants of MIA	952
Registered Accountants of MIA	202
Licensed Accountants of MIA	15
Advanced Course Exam of IRD	128
Advocates & Solicitors	7
Approved Tax Agents	127
MIT Graduates	7
Others	177
	1615

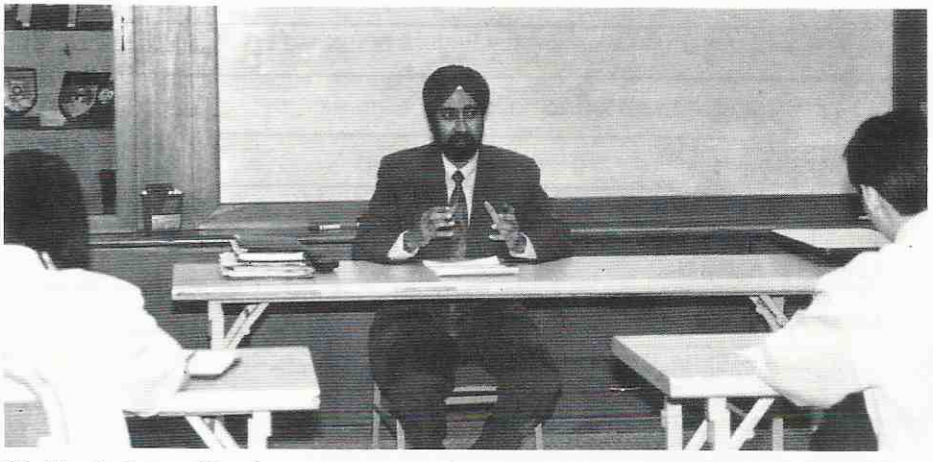
BUDGET 2000 ACTIVITIES

Mr. Quah Poh Keat



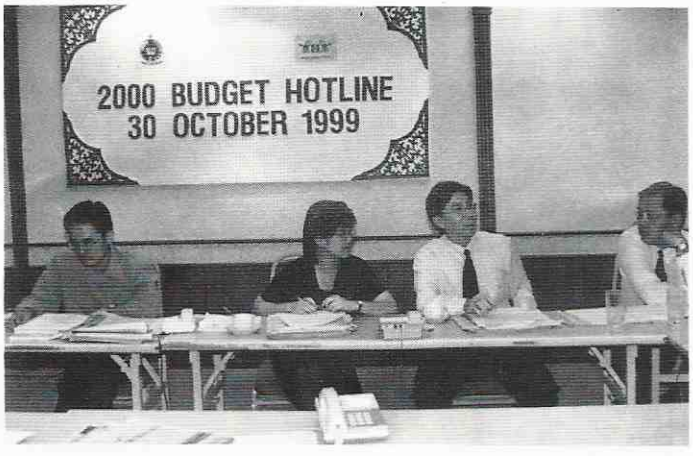
Mr. Harpal Singh Dhillon

Mr. Lee Yat Kong



Mr. Veerinderjeet Singh

Budget 2000 Hotline Service



CHANGE OF PARTICULARS

Name _____

Membership No: _____

Postal Address: _____

_____

_____

I.C No: _____

H/p No: ( ) _____

PRACTISING AS/PLACE OF EMPLOYMENT

Name of Firm _____

Position _____

Address: _____

_____

_____

Tel. ( ) _____

Fax ( ) _____

E-mail Address:

1. Latest Tax Agent No.* _____
2. Latest Audit LIcence No.* _____
3. Advance Course Examination and Date Certificate Issued: _____

RESIDENTAIL ADDRESS

Address: _____

_____

_____

Tel: ( ) _____

_____

** This information will determine whether you will be under the category of practising or non-practising.*

NOTE

You are requested to return the completed form to the Secretariat by fax or post to:

MALAYSIAN INSTITUTE OF TAXATION (225750 T)
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Malaysian Institute of Taxation

How to become a member of the Malaysian Institute of Taxation

Benefits and Privileges of Membership
The Principal benefits to be derived from membership are:

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

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

Associate Membership

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

Fellow Membership

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

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

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

	Fellow	Associate
(a) Admission Fees	RM300	RM200
(b) Annual Subscription	RM145	RM120

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

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

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

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