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Malaysian Institute of Taxation

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The objectives of the Institute are, inter alia:

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

FOREIGN CONTROL REGULATIONS

by Tax Junior

The 'drastic measures' which the Prime Minister had in late August warned were needed to rescue the nation out of its currency dilemma came in the form of new foreign currency capital regulations. These came into force from 1 September 1998 and were necessary to regain monetary independence and insulate the Malaysian economy from the prospects of further deterioration in the world economic and financial environment.

Tight controls on international trading and speculation in the Malaysian Ringgit were imposed. The Ringgit can now no longer be traded in the open market and domestic financial institutions are barred from offering credit facilities to non-resident banks and stockbroking companies. An exchange rate of RM3.80 to the US Dollar has been fixed. Malaysians travelling overseas require the Central Bank's permission to take specified sums of money out and even exports and imports came under stricter controls. All external trade must now be conducted in foreign currency. The Malaysian government has also stopped offshore trading in Malaysian stocks in Singapore. There is in addition a 365 days restriction on foreigners regarding repatriation of Ringgit proceeds of Malaysian assets.

Much has been reported since on Malaysian's capital controls. A lot of confusion however still exist which Bank Negara to their credit have timely stepped in and clarified via press releases and public talks. The Bank's website at www.bnm.com.my is a valuable source so are the new Exchange Control of Malaysia Notices (ECM). The Government have also gone on road shows overseas to explain Malaysia's move.

To the extent that capital controls affects Malaysians, perhaps the most wide-ranging would admittedly be the restriction on currency importation and exportation. From 1 October 1998, travellers are allowed to import or export Ringgit currency of not more than RM1,000 per person. However there are no limits on the import of foreign currencies by resident and non-resident travellers. The export of foreign currencies by resident travellers is permitted, up to a maximum of RM10,000 equivalent but non-resident travellers can take out up to the amount of foreign exchange brought into Malaysia. The Government implements control via the filling of the Traveller's Declaration Form, now required at all major entry and exit points. Failure to truthfully complete the TDF will result in the offender being fined RM10,000 or three years' imprisonment. The seriousness of the Government of this measure is seen in the recent arrest of three travellers crossing into Singapore with more than RM100,000 undeclared cash.

The other control issue which widely affected Malaysians would be undoubtedly the requirement to repatriate the Ringgit by 1 October 1998. After this date any Ringgit left overseas would become worthless outside the country's borders. This targeted those with Ringgit deposits overseas estimated at 20 billion to 25 billion Ringgit. The one month grace period however did not provide sufficient time for depositors to repatriate their money and many had opted to convert their Ringgit into dollar deposits though offered at RM4.00 to one US Dollar.

For foreign investors, one of their foremost concerns was whether they could continue to repatriate their profits out of Malaysia. Bank Negara said yes; there are no restrictions under the new controls. Under their Clarification 2, posted on their website on 5 Septem 1998, point 18 states 'Repatriation of divide interest, rental, commissions profits No restrictions u presentation of the necess documentary evidence to the ba Well and good. What about ac implementation? The following concerning profit repatriation interesting. An accountant of a for company wanted to remit its Malay Branch's profits to the parent comp The local bank was unwilling to pro the remittance without an appr letter from Bank Negara. accountant was baffled and telepho Bank Negara which confirmed that p approval was indeed not required. bank still wanted proof. Perhaps reason why the bank was reluctan process the Branch's remittance was the Branch's bank account, in this c was classified as an 'External Acco With the restrictions now on the us funds in such Accounts, the ba reluctance was understandable. W is interesting is that under ECM 3, account of a Branch registered Malaysia should be classified as 'Resident Account' and not as 'External Account'.

In another incident, this ti regarding payments to non-resident Malaysian importer wanted to re funds abroad to its Thailand Branch pay its suppliers from that coun Payment to the Branch was to be m in foreign currency. The local ba refused to process the payment as t said that payments must be made Ringgit, a point in which they w correct - payments between reside must indeed be in Ringgit. Howe ECM 1 defines an overseas branch Malaysian company as a non-resid and not as a resident. Going

Continuation on pa

another bank which understood this position solved the problem for this importer.

Are the capital controls here to stay? The Malaysian Government has said that they will only be removed as and when the international community has taken action towards regulating the short-term capital flow and adopt new structures in the financial market. Has the controls so far been beneficial at all to the country? Well it has been reported that the KLSE composite index has surged to a high of over 400 points in November from a low of 273 on September 1. This is indicative of the effectiveness of the controls. So there is a light at the end of the tunnel for Malaysia. It may well be dim now but at least the light is there.

Bank Negara Malaysia
Central Bank of Malaysia

A Guide to The Exchange Control Rules

FOREWORD

This booklet is a summary of the Exchange Control Rules which have been implemented on 1 September 1998 by the Government of Malaysia.

The objective of this booklet is to provide information on the requirement of the Exchange Control Rules for the public especially travellers, exporters, importers, investors, expatriates, foreign workers and students. It is our hope that this booklet will give a better understanding of the Exchange Control Rules.

FURTHER CLARIFICATION

Computation of the 12 months holding period for external account holder before ringgit may be converted into foreign currency

The 12 months would start from 1 September 1998, for non-residents who already have ringgit funds in Malaysia, that is they had deposited funds or had purchased ringgit assets before 1 September. During this one year period, the non-resident is allowed to change the type or form of ringgit asset he chooses to invest in.

If the non-resident converts foreign currency into ringgit and makes a ringgit deposit or purchases ringgit assets after 1 September 1998, then the 12 month period would start from the date the ringgit deposit is made or the ringgit asset is purchased. During this one year period, the non-resident is allowed to change the type or form of ringgit asset he chooses to invest in.

Submission of Application forms

All applications for exchange control approval should be addressed to:

Director
Exchange Control Department,
Bank Negara Malaysia,
Jalan Dato'Onn,
50480 Kuala Lumpur.

Telephone Nos: 03-2988044 ext 7353, 7506, 7739, 7508.

Direct lines: 03-2910772, 2910894, 2984154, 2987305, 2987304, 2916545, 2928736, 2914827, 2916951.

Facsimile Nos: 03-2937732, 2912990, 2933791, 2936919

...on page

DEFINITION OF RESIDENT:	DEFINITION OF NON-RESIDENT:	DEFINITION OF EXTERNAL ACCOUNT:	DEFINITION OF RINGGIT ASSET IN MALAYSIA:
(a) Malaysian citizen (b) Malaysian citizen with PR status of another country but resides in Malaysia (c) Non-Malaysian citizen with PR status in Malaysia and resides in Malaysia (d) Business enterprises/societies established/operating in Malaysia	(a) Non-Malaysian citizen (b) Malaysian citizen with PR status abroad and resides abroad (c) Foreign embassies, high commissions, supranationals, central banks (d) Business entities established abroad	A ringgit account with a financial institution in Malaysia which is maintained by a non-resident or where the beneficial owner of the ringgit funds is a non-resident	(a) Any form of bank deposits (b) Land & building (c) Malaysian securities (whether listed or unlisted)

EXCHANGE CONTROL RULES

PENALTY FOR SECTION A ONLY

The penalty for offences committed under the Exchange Control Act, 1953

Upon conviction: • ***MINIMUM FINE*** – *not less than the excess amount or RM10,000 whichever is lower*

MAXIMUM FINE – *not exceeding 10 times the excess amount or RM 10,000 whichever is greater*

A. TRAVELLERS

1. Who should complete the Travellers Declaration Form (TDF)

(a) Regardless of the amount of ringgit notes or foreign currency notes/traveller's cheques brought into or taken out of the country
- all residents must complete the TDF
- all non-residents must complete the TDF

(b) Both residents and non-residents must ensure approval is obtained for carrying above the permitted amount

2. Bringing into Malaysia ringgit or foreign currency on person or in baggage

(a) Bring in foreign currency notes and traveller's cheques of any amount

(b) Bring in ringgit notes up to RM1,000

(c) Bring in ringgit notes above RM1,000

3. Taking out of Malaysia ringgit or foreign currency on person or in baggage

(a) Take out foreign currency notes and traveller's cheques up to the equivalent of RM10,000

(b) Take out foreign currency notes and traveller's cheques exceeding the equivalent of RM10,000

(c) Take out foreign currency notes and traveller's cheques up to the amount brought in (with documentary evidence for amount brought in)

(d) Take out foreign currency notes and traveller's cheques (without documentary evidence for amount brought in)

(e) Take out ringgit notes up to RM1,000

TRAVELLERS			
Resident		Non-resident	
Yes	Needs approval	Yes	Needs approval
✓		✓	
✓		✓	
	✓		✓
✓		Not applicable	
	✓	Not applicable	
Not applicable		✓	
Not applicable			✓
✓		✓	

PENALTY FOR SECTIONS B TO I

The penalty for offences committed under the Exchange Control Act, 1953

Upon conviction: • ***FINE – Up to RM10,000;*** • ***JAIL TERM – Not exceeding 3 years; or*** • ***BOTH***

B. EXPORTERS	**EXPORTERS**		
	Yes	Needs approval	No
1. Export proceeds			
(a) Received in full, within a period of six months from date of shipment/export	✓		
(b) Received in full, after six months from date of shipment/export		✓	
(c) Offset against payments to the non-resident		✓	
2. Receive from non-residents in ringgit for:			
(a) proceeds for export of goods and services contracted after 1300 hours on 1 September 1998			✓
(b) drawdown of loan			✓
3. Receive from non-residents in foreign currency:			
(a) proceeds for export of goods and services	✓		
(b) drawdown of loans which has been approved by Bank Negara Malaysia (BNM) (either under general or specific approval)	✓		
4. Pay to non-residents in ringgit for:			
(a) services			✓
(b) repayment of loan			✓
5. Pay to non-residents in foreign currency for:			
(a) services	✓		
(b) repayment of loan which has been approved by BNM (either under general or specific approval)	✓		
6. Foreign currency accounts			
To retain export proceeds in foreign currency:			
(a) With commercial banks in Malaysia, up to the following limits	✓		
• USD10 million for exporter with average monthly export receipts exceeding RM20 million;			
• USD5 million for exporter with average monthly export receipts above RM10 million and up to RM20 million;			
• USD3 million for exporter with average monthly export receipts between RM5 million and RM10 million;			
• USD1 million for new exporter or those with average monthly export receipts of less than RM5 million			
(b) With commercial banks in Malaysia, in excess of the above limits		✓	
(c) With banks overseas, including Labuan offshore banks		✓	
7. Borrowing in foreign currency			
(a) Obtain short-term (less than 12 months) trade financing facilities in foreign currency from commercial banks in Malaysia	✓		
(b) Other than (a) above, borrow in foreign currency up to the aggregate of RM5 million equivalent from banks in Malaysia, Labuan offshore banks or any non-resident	✓		
(c) Borrow in foreign currency exceeding the aggregate of RM5 million equivalent.		✓	
8. Payment to another resident in foreign currency for:			
(a) Drawdown and repayment of loans from banks in Malaysia (with BNM approval - general/specific)	✓		
(b) All other purposes [other than 8 (a)]		✓	

C. IMPORTERS

	IMPORTERS		
	Yes	Needs approval	No
1. **Pay to non-residents in ringgit for:**			
(a) import of goods and services contracted after 1300 hours on 1 September 1998			✓
(b) repayment of loan			✓
2. **Pay to non-residents in foreign currency for:**			
(a) import of goods and services	✓		
(b) repayment of loan which has been approved by BNM (either under general or specific approval)	✓		
3. **Receive from non-residents in ringgit for drawdown of loans**			✓
4. **Receive from non-residents in foreign currency for drawdown of loans which have been approved by BNM (either under general or specific approval)**	✓		
5. **Borrowing in foreign currency**			
(a) Obtain short-term (less than 12 months) trade financing facilities in foreign currency from commercial banks in Malaysia	✓		
(b) Other than (a) above, borrow in foreign currency up to the aggregate of RM5 million equivalent from banks in Malaysia, Labuan offshore banks or any non-resident	✓		
(c) Borrow in foreign currency exceeding the aggregate of RM5 million equivalent.		✓	
6. **Payment to another resident in foreign currency**			
(a) For drawdown and repayment of loans from banks in Malaysia (with BNM approval - general/specific)	✓		
(b) For all other purposes [other than 6 (a)]		✓	
7. **Foreign currency accounts**			
(a) Convert ringgit into foreign currency for placement pending payment to non-residents for imports		✓	

D. MALAYSIAN INVESTORS

	MALAYSIAN INVESTORS		
	Yes	Needs approval	No
1. **Payment to non-residents in foreign currency**			
(a) To invest abroad in any form (e.g. purchase of property, shares), **other than placement of deposits**			
• up to RM10,000 per remittance	✓		
• above RM10,000 per remittance		✓	
(b) As placement of deposits		✓	
2. **Receipt from non-residents in foreign currency for:**			
(a) Drawdown of loans which has been approved by BNM (enter under general or specific approval)	✓		
(b) Dividends, interest and profits from investments abroad or proceeds from sale of investment abroad	✓		
3. **Foreign currency accounts**			
(a) To convert ringgit into foreign currency for placement, pending payment to non-residents for the investments		✓	
(b) To retain the foreign currency derived from dividends, interest and profits from investments abroad or proceeds from sale of investment abroad			
• with commercial banks in Malaysia for any amount, if investor has no domestic borrowing	✓		
• with commercial banks in Malaysia up to USD500,000 if investor has domestic borrowing	✓		
• with Labuan offshore banks up to USD500,000	✓		
• with Labuan offshore banks above USD500,000		✓	
• with overseas banks		✓	
4. **Borrowing in foreign currency**			
(a) Borrow in foreign currency up to the aggregate of RM5 million equivalent from banks in Malaysia, Labuan offshore banks or any non-resident	✓		
(b) Borrow in foreign currency exceeding the aggregate of RM5 million equivalent.		✓	

E. FOREIGN INVESTORS

	FOREIGN INVESTORS		
	Yes	Needs approval	No
1. Maintain foreign currency accounts in Malaysia			
(a) Use funds in account to invest in ringgit assets in Malaysia	✓		
(b) Transfer funds in this account to accounts abroad	✓		
2. Maintain ringgit External Accounts in Malaysia			
(a) Use funds in account to invest in ringgit assets in Malaysia	✓		
(b) Credit the account with repatriation of offshore ringgit funds maintained with banks overseas			✓
(c) Convert ringgit in account into foreign currency which have been invested in ringgit assets for less than 12 months			✓
(d) Convert ringgit in account into foreign currency which have been invested in ringgit assets for more than 12 months	✓		
(e) Convert ringgit funds derived from dividends, interest, rentals, commission, fees, and profits	✓		
3. Obtain domestic loans			
(a) In ringgit from banking institutions in Malaysia up to an aggregate of RM200,000	✓		
(b) In ringgit from banking institutions in Malaysia exceeding RM200,000		✓	

F. EXPATRIATES

	EXPATRIATES		
	Yes	Needs approval	No
1. Maintain foreign currency accounts in Malaysia			
(a) Use funds in account to invest in Malaysian assets	✓		
(b) Transfer funds in this account to accounts abroad	✓		
2. Maintain ringgit External Accounts in Malaysia			
(a) Debit the account to pay to any party	✓		
(b) Credit the account with ringgit receipts for salaries, wages or fees	✓		
(c) Credit the account with repatriation of offshore ringgit funds maintained with banks overseas			✓
(d) Convert ringgit in account into foreign currency for repatriation abroad up to the equivalent of salary	✓		
3. Obtain domestic loans			
(a) In ringgit from banking institutions in Malaysia up to an aggregate of RM200,000	✓		
(b) Other than (a) above, in ringgit from any resident for the purchase of one residential property in Malaysia and one vehicle loan (both for personal use)	✓		
(c) Other than (b) above, in ringgit from any resident		✓	
(d) In ringgit from banking institutions in Malaysia exceeding RM200,000		✓	

G. FOREIGN WORKERS

	FOREIGN WORKERS		
	Yes	Needs approval	No
1. **Maintain foreign currency accounts in Malaysia**			
(a) Use funds in account to invest in Malaysian assets	✓		
(b) Transfer funds in this account to accounts abroad	✓		
2. **Maintain ringgit External Accounts in Malaysia**			
(a) Debit the account to pay to any party	✓		
(b) Credit the account with ringgit receipts for salaries, wages or fees	✓		
(c) Credit the account with repatriation of offshore ringgit funds maintained with banks overseas			✓
(d) Convert ringgit in account into foreign currency for repatriation abroad up to the equivalent of wages	✓		
3. **Obtain domestic loans**			
(a) In ringgit from banking institutions in Malaysia up to an aggregate of RM200,000	✓		
(b) Other than (a) above, in ringgit from any resident for the purchase of one residential property in Malaysia and one vehicle loan (both for personal use)	✓		
(c) Other than (b) above, in ringgit from any resident		✓	
(d) In ringgit from banking institutions in Malaysia exceeding RM200,000		✓	

H. MALAYSIANS WORKING ABROAD

	MALAYSIANS WORKING ABROAD		
	Yes	Needs approval	No
1. **Foreign currency accounts to be opened with**			
(a) any commercial bank in Malaysia			
• up to USD100,000	✓		
• above USD100,000		✓	
(b) any Labuan offshore bank			
• up to USD100,000	✓		
• above USD100,000		✓	
(c) any overseas bank			
• up to USD50,000	✓		
• above USD50,000		✓	
2. **Remittances to the resident's foreign currency accounts**			
(a) In the currency of the account within the limits allowed for such accounts (as per item H 1 above)	✓		
(b) By the resident's employer	✓		

I. MALAYSIANS STUDYING ABROAD

	MALAYSIANS STUDYING ABROAD		
	Yes	Needs approval	No
1. **Foreign currency accounts opened with:**			
• any commercial bank in Malaysia;	✓		
• any Labuan offshore bank; and	✓		
• any overseas bank	✓		
up to the amount required for one year's tuition fees, accommodation and general living expenses	✓		
2. **Remittances to the resident's foreign currency accounts**			
(a) In the currency of the account up to the amount required for one year's tuition fees, accommodation and general living expenses	✓		
(b) By the resident's parent/guardian/relative/employer	✓		
3. **Remittances to institutes of higher learning in foreign currency for fees and accommodation**	✓		

LABUAN INTERNATIONAL OFFSHORE FINANCIAL CENTRE

EXCHANGE CONTROL RULES

The penalty for offences committed under the Exchange Control Act, 1953
Upon conviction: • ***FINE – Up to RM10,000;*** • ***JAIL TERM – Not exceeding 3 years; or*** • ***BOTH***

A OFFSHORE COMPANIES/FOREIGN OFFSHORE COMPANIES	Allowed	Needs Approval	Not Allowed
1. Open foreign currency accounts in Malaysia or overseas	✔		
2. Open External Accounts in Malaysia to:-			
• defray statutory and administrative expenses	✔		
• grant loans to staff	✔		
• pay for goods and services in Malaysia	✔		
• place fixed deposits with commercial banks in Malaysia	✔		
• invest in ringgit assets in Malaysia	✔		
3. External Accounts may be funded from:-			
• sale of foreign currency	✔		
• credit facilities up to RM200,000 in total from banking institutions in Malaysia	✔		
• dividends, interest, rental, profits, fees and commission	✔		
• repatriation of ringgit from overseas banks			✔
4. Convert funds in the External Account into foreign currency arising from receipt of dividends, interest, rental, profits, fees and commission	✔		
5. Borrow in foreign currency or lend in foreign currency, with commercial banks or Tier-1 merchant banks in Malaysia, or any non-resident	✔		
6. Borrow in ringgit (except credit facilities up to RM200,000 in total from banking institutions in Malaysia)			✔
7. Lend in ringgit			✔
8. Undertake any foreign exchange transactions in two foreign currencies with an authorised dealer or a Tier-1 merchant bank in Malaysia or any non-resident	✔		
9. All transactions with Specified Persons or Restricted Currencies (Israel, Serbia and Montenegro)		✔	

B **OFFSHORE INSURANCE ENTITIES**	Allowed	Needs Approval	Not Allowed
1. Open foreign currency accounts in Malaysia or overseas	✔		
2. Open External Accounts in Malaysia to:-			
• defray statutory and administrative expenses	✔		
• grant loans to staff	✔		
• pay for goods and services in Malaysia	✔		
• place fixed deposits with commercial banks in Malaysia	✔		
• pay insurance premiums and claims for re-insurance of Malaysian risks and direct insurance of permitted Malaysian risks	✔		
• Invest in ringgit assets in Malaysia	✔		
3. External Accounts may be funded from:-			
• sale of foreign currency	✔		
• credit facilities up to RM200,000 in total from banking institutions in Malaysia	✔		
• dividends, interest, rental, profits, fees and commission	✔		
• receipt of insurance premiums and claims for re-insurance of Malaysian risks and direct insurance of permitted Malaysian risks	✔		
• repatriation of ringgit from overseas banks			✔
4. Convert funds in the External Account into foreign currency arising from receipt of dividends, interest, rental, profits, fees and commission	✔		
5. Borrow in foreign currency or lend in foreign currency, with commercial banks or Tier-1 merchant banks in Malaysia, or any non-resident	✔		
6. Borrow in ringgit (except credit facilities up to RM200,000 in total from banking institutions in Malaysia)			✔
7. Lend in ringgit			✔
8. Undertake any foreign exchange transactions in two foreign currencies with an authorised dealer or a Tier-1 merchant bank or any non-resident	✔		
9. All transactions with Specified Persons or Restricted Currencies (Israel, Serbia and Montenegro)		✔	

C **OFFSHORE BANKS**

	Allowed	Needs Approval	Not Allowed
1. Open foreign currency accounts in Malaysia or overseas	✔		
2. Open External Accounts in Malaysia to:-			
• defray statutory and administrative expenses	✔		
• grant loans to staff	✔		
• pay for goods and services in Malaysia	✔		
• place fixed deposits with commercial banks in Malaysia	✔		
• invest in ringgit assets in Malaysia	✔		
3. External Accounts may be funded from:-			
• sale of foreign currency	✔		
• credit facilities up to RM200,000 in total from banking institutions in Malaysia	✔		
• dividends, interest, rental, profits, fees and commission	✔		
• repatriation of ringgit from overseas banks			✔
4. Convert funds in the External Account into foreign currency arising from receipt of dividends, interest, rental, profits, fees and commission	✔		
5. Trade in ringgit instruments			✔
6. Borrow in foreign currency or lend in foreign currency, with commercial banks or Tier-1 merchant banks in Malaysia, or any non-resident	✔		
7. Borrow in ringgit (except credit facilities up to RM200,000 in total from banking institutions in Malaysia)			✔
8. Lend in ringgit			✔
9. Issue guarantees in ringgit	✔		
10. Issue guarantees in foreign currency	✔		
11. Receive payment under guarantees in ringgit			✔
12. Receive payment for guarantee fees in ringgit	✔		
13. Receive payment for guarantees in foreign currency (fees and claims)	✔		
14. Accept ringgit deposits from residents or non-residents			✔
15. Undertake any foreign exchange transactions, including remittances, forward and spot purchases and sales with or on behalf of residents (other than an authorised dealer or a Tier-1 merchant bank in Malaysia)		✔	
16. Undertake any foreign exchange transactions in two foreign currencies with an authorised dealer or a Tier-1 merchant bank or any non-resident	✔		
17. All transactions with Specified Persons or Restricted Currencies (Israel, Serbia and Montenegro)		✔	

Hidden Economy & Tax Investigations: A Malaysian Perspective

by
Dr. Jeyapalan Kasipillai, School of Accountancy, University Utara Malaysia

1 INTRODUCTION

A specialised study of the hidden economy as an intricate phenomenon was first applied to industrialised countries and has been subject to considerable development during the last two decades. It has long been realised that the existence of widespread tax evasion as a part of the hidden economy is not only confined to industrialised countries but also exists in developing countries such as Malaysia. The hidden economy phenomenon is known by different terms in different countries. In the US it is called the underground or the subterranean economy; in Britain and India it is called the black economy; in Belgium, the undeclared income; in Germany, the Schattenwirtschaft or shadow economy; in South Africa, the unrecorded sector; in the Soviet Union, the second economy; and in Italy, the economia summersa or submerged economy.

The next section (Section 2) outlines the concepts of hidden income, hidden economy and tax revenue. Section 3 outlines the importance of estimating tax evasion and the following section (Section 4) involves a broad review of tax investigations in Malaysia. This section also outlines in detail the operational functions of the Inland Revenue Board (IRB) with particular reference to the functions of the specialised Investigation and Intelligence Unit. The methods of computing undisclosed income are discussed in Section 5. Some concluding comments are contained in Section 6.

2. CONCEPTS OF HIDDEN INCOME, HIDDEN ECONOMY AND TAX REVENUE

Hidden income can be defined to include legitimate earnings which are hidden in order to evade tax, as well as illegal earnings derived from clandestine operations (such as smuggling and unlicensed money lending) and illegal services (such as cuts and kickbacks on contracts and other financial malpractices) over a defined period, normally a calendar year.

There are various interpretations to the definition of hidden economy . Some researchers include all expenditure on illegal drugs and gambling while others would include only incomes that originate from these activities. Often the definition given by different authors do not specify whether they are using gross or net concepts. A simple and convenient definition of the underground economy provided by Tanzi (1983), is the gross national product which because of unreporting or underreporting, is not measured by official statistics.

Since hidden economy refers to the unreported portion of income generated in an economy, this portion of income will by definition be precluded from any form of taxation. Therefore, these funds become a major portion of the total amount of tax that is evaded. Since measuring tax evasion per se is often marred by very approximate estimates and also because estimates of hidden economies are more readily available, the size of the hidden economy is used as a proxy for ascertaining the extent of tax evasion. Hence, the size o hidden economy is only an indi indicator of tax evasion.

According to Tanzi, the two ma groups or factors that create an underground economy are taxes government restrictions, both o can bring about an underground economy. Assuming that there a government restrictions, taxes a will induce some activities to go underground so that they go unrecorded and escape the pay taxes. In every fiscal system ho there are several forms of taxes o varying importance, meaning g stress is applied to various types taxes such as personal and corp tax. In the US, for instance, the discussion on estimating the hid economy has almost exclusively centred on income tax which is a form of direct tax. Conversely, v added tax which is a form of in tax, is popularly focused on in E This paper confines the discuss evasion of income tax.

3. IMPORTANCE OF ESTIMATING TAX EVASI

Estimating tax evasion provides important tool to the tax admini to detect and evaluate the attain made in what concerns complian with tax legislation on the part o taxpayers, and efficiency in tax administration within its availab of human and material resources this respect, it is prudent for tax administrators to develop syste programs aimed at both measuri evasion and interpreting the resu these measurements.

The case for measuring evasion is based both on administrative grounds and on fundamental issues of tax policy.

- **Administrative grounds**
  Knowledge of the amounts and patterns of evasion permit more effective management of administrative resources devoted to the enforcement programs and for controlling evasion. Another administrative point is that skill in measuring evasion is an important tool in evaluating the success of enforcement or anti-fraud programs, as well as other measures employed to control or reduce evasion. It is necessary to know whether the measured patterns of evasion have changed. This requires measuring evasion both before and after enforcement programs are instituted.

- **Tax policy**
  Tax policy makers make assumptions about evasion in deciding about the proper balance among taxes and the tax system and the proper structure of rates and special provisions within particular taxes. Tax rates on withholding income, at least in the case of Malaysia, are low because enforcement of income tax on those incomes is more effective than on other types of income. Various types of indirect taxes such as sales and service taxes, excise and import duties are justified on the ground that they will reach taxpayers who have learned to evade income tax. Also the measurement of evasion is necessary for efficient design of efforts to curb it. For example, knowing the different degrees of underreporting that characterise the various sectors of the industry will permit the 'crusade' against evasion to be designed with minimum cost but maximum results in terms of money generated.

The treatment of hidden (underground) activity may differ from one country to another. For example, the Australian Bureau of Statistics makes adjustments to income tax data in order to account, in a very rough and ready way, for income concealed (or expenses overstated) when compiling national accounts estimates. Therefore, the Gross Domestic Product figure as measured on the income side of the accounts, *already includes an estimated value* for the hidden economy. Such a treatment is not followed in Malaysia.

4. TAX INVESTIGATIONS

The policy of the Malaysian Inland Revenue Board is to achieve, as far as possible, voluntary compliance with the Income Tax Act (ITA) by the majority of the taxpayers. It hopes to achieve this objective by a vigorous but uniform enforcement of the ITA, in particular those provisions relating to offences and penalties, against all taxpayers, irrespective of status or social standing.

The ITA has provided for varying penalties, fines and periods of imprisonment for tax evasion in order to demonstrate that understatement of income does not pay in the final analysis (See **Appendix I** for a summary of offences and penalties, ITA, 1967). The penalties also provide compensation to the government for having been deprived of revenue due to deferred tax payment.

Serious cases of tax evasion are vigorously prosecuted in Court. Such a move would act as a deterrent to other taxpayers as well as to publicise that tax evasion is as serious a white collar crime as a criminal breach of trust. For instance, the amount of cases compounded for various tax offences in 1997 was 16,340, an increase of 2.3 per cent compared to the previous year. The amount of compound fees collected in 1997 was RM5.17 million, the highest recorded in the history of IRB. At the same time, only one taxpayer in Malaysia has been known to be sentenced to imprisonment for one day (in 1989) and fined RM750 for each of the offences of not submitting a Return Form for years of assessment 1984, 1985 and 1986 (Berita Harian, 1 November 1989).

In any prosecution, the burden of proof that a return has been made or a notice given, shall be on the taxpayer (Sec 112 ITA). In the case of wilful evasion, the presumption of guilt, where the Revenue Board proves that the taxpayer has made a false *statement or entry in a Return, is also* on the taxpayer (Sec 114(2) ITA).

The special task of investigating suspected cases of tax evasion is entrusted to the Investigation and Intelligence Unit of the IRB.

The following are discussed below:

- Organisational functions
- Decision to investigate
- Indicators of fraud
- Investigations of companies

4.1 Organisational Functions

The Investigation and Intelligence Unit is directly headed by the Director General of Inland Revenue (DGIR) who is assisted by three Deputy Director Generals. The operational functions of the IRB are carried out by 33 branch offices located throughout Malaysia and headed by Senior Assistant Directors. The Directors of Sabah and Sarawak are responsible for administering branch offices within their respective states. Most branches have an investigation unit and they are staffed by at least 6-20 senior officials, depending on the size of branches and the concentration or density of taxpayers.

4.1.1 Duties of an Investigation Officer

The duty of an investigation officer is to pursue diligently all cases of investigation allotted to the officer. The officer is to investigate firmly but also fairly, all possible leads so as to obtain the necessary *evidence of fraud or other* acts which may have led to a reduction in tax liability. Proper records of the work completed have to be maintained in an orderly manner. When an investigation is completed,

the officer has to list his findings in a comprehensive report setting out the facts uncovered with supporting documents. For this role, the investigation officer is provided with special understanding of court procedures. When the taxpayer is prosecuted in court, an investigation officer will have to brief the legal officer assigned to the case who will then go through the evidence with him.

4.1.2 Objectives of an Investigation

The main objective of an income tax investigation is to trace understated or unassessed income by examining books of accounts and other primary records or documents. The initial task of an investigation officer is to establish that the income is taxable in taxpayer's hands and that the evader has failed to declare it in the returns. The officer would then have to obtain all evidence to show that the omission is wilful with intent to evade.

4.2 Decision to investigate

In determining whether or not to investigate, it is clear that the powers vested with the DGIR must be used for the purposes of the ITA, 1967 (See Appendix II for an outline of the scope for back duty inquiry). It appears that the Director General has an unfettered discretion as to whether or not to issue a notice under Sec 78 or to seek access under Sec 80 to carry out an investigation under the ITA. Nevertheless, there are several factors that the DGIR would take into account. A few of these factors are discussed below:

4.2.1 The cost and effect of the investigation upon the general public

The DGIR would take into account the cost to the taxpayers as a whole of having resources tied up in and expended in a normally prolonged detailed investigation. A heavy handed approach would attract adverse response from certain taxpayers with vested interest. This may or may not be desirable depending upon the circumstances. For instance, the DGIR would want to demonstrate to the taxpayers at large a crack down on tax evaders and would thus obtain maximum deterrent value from such activities. However, it is only the potential evaders who need to worry about these surprise 'raids'.

4.2.2 No Person is above the Law

The DGIR would have to demonstrate that certain persons are not above the law of the land. Press releases highlighting tax evasion are necessary to ensure that the public believes that taxpayers, irrespective of their status, comply with the law as it stands. For instance, a newspaper report highlighted the following: "The Inland Revenue Department (as it was known then) has identified several companies, including multi-national companies, as hard-core tax evaders and will charge them in court soon" (New Straits Times, 15 March 1992). Another report highlighted that two foreign multinational companies and two corporate figures have been identified by the Inland Revenue Department as having evaded tax amounting to some RM62 million (New Straits Time 17 September 1992).

4.2.3 The Cost and Likely Benefits to Raise Revenu

The upgrading of computers and the use of sophisticated hardware had raised efficiency and reduced the cost and time factor in carrying out investigation work. Such move had the effect of increasing productivity o the investigation staff and boosted revenue.

4.2.4 Necessity for an Immediate Response

A taxpayer may be leavin the country for one reaso or another. For instance, the taxpayer may decide migrate without settling their tax liabilities. Any information regarding su taxpayers is promptly acted upon while they are within the jurisdiction of the country.

The next section outlines the numerous ways of detecting potential cases for investigation from the accounts submitted by taxpayers.

4.3 Indicators of Fraud

The following indicators of frau could prompt a taxpayer's case t be taken up for investigations.

(i) Variations in the size of iten recorded in the balance she at the end of two or more consecutive years of assessment;
(ii) Sudden increase in sundry other creditors;
(iii) Insufficient drawings for private living expenses;
(iv) Investment income does n commensurate to earnings reported;
(v) Irregular patterns in incom reporting;

(vi) Deviation in inter-firm comparison: for instance gross profit ratios may vary from the norm;
(vii) Disproportionate deductions;
(viii) Conspicuous operating expenditure: for example, a huge electricity bill is not matched with value of output;
(ix) Unreasonably low turnover or profits having regard to the type of business, its location or number of customers.

Investigation of Companies

The Inland Revenue Board has not set any criteria as to which areas of a company's affairs would be examined to confirm the basic accuracy of the accounts and returns submitted but it is logical to assume that the following areas will be the subject of scrutiny:

- Calculation of capital allowances and verification of source documents, such as sale and purchase agreements.
- Valuation of trading stock
- confirmation of closing stock for the previous year.
- Section 33(2) restriction.
- confirming allowability of interest expenses claimed.
- Repairs particularly to ensure that no capital items have been charged.
- Examination of remuneration paid to both directors and employees to ensure that correct Employer's Return have been made.
- Heavily qualified auditor's report.

COMPUTING UNDERSTATED INCOME

Methods of Computing Omitted Income

There are various methods adopted for recovery of understated income. Broadly, they could be classified under three categories:

5.1.1 Capital Accretion or Net Worth Method

This method is widely employed to determine the understated income of individuals, viz. sole-proprietors, directors of companies, partners in a partnership or even salaried employees. Initially, the capital statement method involves the collection and examination of the taxpayer's personal and business records to obtain particulars of assets and liabilities and for establishing the lifestyle. It is a long drawn out process which entails a study and verification of the detailed movement of the taxpayer's assets. The DGIR will be comparing increments in wealth with known income on an annual (calendar year) basis to determine whether there has been any omission or understatement of income which is shown by discrepancies in the comparison. From the investigators point of view, time, patience and experience are required for this type of work and there is no tailor-made formula which can be applied to tax investigation work. Another consideration that needs to be considered is the marital status of the taxpayer. A married person is required to include the investments and assets held in the name of the spouse and dependent children in the capital statement.

5.1.2 Accounting Basis

This is another method for determining omitted income. Where bookkeeping records are available, the accounting basis could be used to recover understated income of an individual business. In the case of companies, investigation not only entails an examination of the accounts of the company but also includes an appraisal of the directors assets, especially in the case of companies controlled by family members or controlled companies within the meaning of Sec 139 of the ITA, 1967.

5.1.3 Technical adjustments - interpretation of the relevant law

An investigation case may unearth land transactions which the IRB would consider as 'an adventure in the nature of a trade'. Such profits could be regarded as a technical adjustment, depending on the circumstances of the case, and are taxable under Sec 4(a) ITA. The additional tax imposed would normally not attract penalties because it is not considered as evasion of income. Technical adjustments however are comparatively less popular in their usage with respect to computing omitted income.

6. CONCLUDING COMMENTS

This paper sought to gaze through the hidden economy and at that 'tax crystal ball' and revealed a number of interesting possibilities. The Malaysian taxpayers like their counterparts elsewhere are seriously engaged in "loophole mining" of existing tax requirements. The tax authorities will no doubt be close behind to plug the loophole in the existing legislation. Before long, the determined taxpayer will find a new loophole. This dialectic discourse between the tax collector and the taxpayer will remain an on-going saga with no end in sight. This is because

the parting of one's hard earned income is painful for most people. Therefore, the partial movement towards indirect taxes where the 'extraction' is not directly visible is absolutely logical.

In the final analysis, the extent of growth in the hidden economy and tax evasion in a country does not depend on isolated factors but on a complex combination of circumstances. While an ideal situation of full voluntary compliance of the law remains an elusive dream for every government, it is nevertheless prudent to take every practical measure towards its realisation.

APPENDI

SUMMARY OF OFFENCES AND PENALTIES (ITA, 1967)

Offence	*Penalty*
• Failure to furnish a return under Sec. 77(1) or give notice of chargeability [Sec. 77(2) or (3)]	• Fine of not less than RM200 and not more than RM2,000 or six months' imprisonment or both [Sec. 112(1)], or • No prosecution, but taxpayer required to pay penalty of three times the amount of tax [Sec. 112(3)a]
• Incorrect return or incorrect information on income or chargeability [Sec. 113(1) and (2)]	• Fine between RM1,000 and RM10,000 plus penalty equal to twice the amount of tax undercharged [Sec. 113(1)], or • No prosecution, but taxpayer required to pay penalty equal to the tax undercharged [Sec. 113(2)]
• Wilful evasion of tax [Sec. 114(1)]	• Fine between RM1,000 and RM20,000 or three years imprisonment or both plus penalty of three times the tax [Sec. 114(1)]
• Leaving Malaysia without settlement of tax [Sec. 115(1)]	• Fine between RM200 and RM2,000 or six months imprisonment or both
• Obstruction of officers [Sec. 116]	• Maximum fine of RM4,000 or one year imprisonment or both
• Breach of confidence by classified person [Sec. 117(1)]	• Maximum fine of RM4,000 or one year imprisonment or both
• Offences by officials [Sec. 118]	• Maximum fine of RM20,000 or three years imprisonment or both
• Failure to comply with a notice:	
(i) calling for specific returns and production of books [Sec. 78]	• Fine between RM200 and RM2,000 or six months' imprisonment or both
(ii) calling for bank statements, etc. [Sec. 79]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
(iii) requiring books, accounts or records kept to be translated in the national language [Sec. 80(3)]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
(iv) calling for information and particulars [Sec. 81]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
(v) requiring records to be kept and receipts issued in a proper manner [Sec. 82(3)]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
(vi) requiring audited accounts to be produced [Sec. 82(5)]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
(vii) requiring returns containing particulars of income to be submitted by agents [Sec. 84(1)]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
(viii) requiring returns by occupiers of land or premises [Sec. 85]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
• Failure to coply with a statutory order:	
(i) requiring records to be kept in a proper manner and receipts issued (Sec. 82(3)	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]

(ii) requiring employer to submit a return of its employees [Sec. 83(1)]	
Failure to give notice by an employer [Sec. 120(c)]:	
(i) of an employee who has commenced work for the employer [Sec. 83(2)]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
(ii) of an employee who is ceasing work for the employer [Sec. 83(3)]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
(iii) of an employee who is about to leave Malaysia [Sec. 83(4)]	• Fine between RM200 and RM2,000 or six month's imprisonment or both [Sec. 120]
Contravention of the duty imposed under the Act [Sec. 120(d)]	
(i) by a person who fails to keep business records and issue receipts under [Sec. 82 (1)]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
(ii) by an agent acting for a non-resident who fails to submit quarterly returns [Sec. 84(2)]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
(iii) by precedent partner who fails to submit a partnership return [Sec. 86(1)]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
(iv) by chargeable person who fails to inform of change of his address in Malaysia [Sec. 89]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
(v) by a person who holds himself out as a tax agent and does not satisfy the provisions of the Act [Sec. 153(1)]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]
Failure to comply with a direction to deduct tax from emoluments and pensions [Sec. 107]	• Fine between RM200 and RM2,000 or six months' imprisonment or both [Sec. 120]

APPENDIX II

SCOPE FOR BACK DUTY INQUIRY

The Director General of Inland Revenue (DGIR) has wide powers to combat tax evasion. A summary of the administrative powers to investigate and collect information on tax evaders is given below:

- Power to call for specific returns and production of books (Sec 78 ITA).
- Power to call for statement of bank accounts, sources of income, statement of all assets in the name of taxpayer, spouses, dependent child or nominees (Sec 79 ITA).
- Power of access to land and buildings including documents (Sec 80 ITA).
- Power to call for information from any person other than those who are required to observe secrecy (Sec 81 ITA).
- Power to obtain information concerning other persons income or assets or liabilities (Sec 84 ITA).
- Power to go back 12 years if it appears to the Director General that sufficient assessment has not been made on a person liable to tax [Sec 91(1)].
- In the case of fraud or wilful default or negligence committed by or on behalf of any person, there is no time limit to raise additional assessment [Sec 91(3)].
- Recovery of unpaid tax from persons leaving Malaysia (Sec 104).
- Arrest without warrant a person who attempts to leave the country without paying all the taxes specified in the Certificate (Sec 115).
- Finally, it should be noted that documents, information and communication, in the possession of taxpayer's accountant, advocates and solicitors are not privileged from disclosure to the Director General [Sec 142(5)(6)].

QUOTATION

It is not enough to have a vision of the future,
you must also insist on your business operating in accordance with that view.

By **Frank Lorenzo**

LATEST AMENDMENTS TO THE CAPITAL ALLOWANCES COMPUTATIONS

by Choong Kwai Fatt, Tax lecturer, Faculty of Business and Accountancy, University Malaya

INTRODUCTION

The Government had revised the initial and annual allowance rate on certain category of Plant and Machinery in 1998 to be inline with the rapid development of Malaysian economy. This article aims to highlight to the tax practitioners and company on such changes, hoping that they can maximize the tax benefits.

INCOME TAX (QUALIFYING PLANT INITIAL ALLOWANCES) RULES 1998 [PU(A) 294/98]

Property developers, contractors, timber industries and tin mining industries would be able to claim a higher initial allowances rate between 30% to 60% on the qualifying plant expenditure on the provision of machinery or plant incurred and in used for the business. The normal initial allowance rate for the normal industries is only 20%.

The accelerated initial allowances rate for the above plant is not mandatory. An election in writing to claim the initial allowance at the normal rate of 20% instead of the accelerated rate is always available. Company that is not profitable may not want to claim such a high rates as it would not be able to fully utilized it. In such scenarios, the company may make an election to claim the normal rate of 20%.

The followings are the specific initial allowance rate to be claimed by each industry:-

INDUSTRY	NATURE OF BUSINESS	RATE FOR QUALIFYING PLANT EXPENDITURES
1. Building and construction	Construction of any works, roads, structures and buildings	30%
2. Timber	Extraction of timber from a forest	60%
3. Tin mining	Working of a mine for getting tin ore or extracting or dressing tin concentrates	60%

Since the Income Tax (Qualifying Plant Initial Allowance Rules 1998 will take effect from year of assessment 1998, t Tax Laws (amendment) Act 1998 (gazetted on 1 July 1998) h deleted the paragraph 11 and 11A , Schedule 3 of the Incor Tax Act 1967. The relevant paragraphs had the same sprits the Income Tax (Qualifying Plant Initial Allowances) Rul 1998.

It should be noted that the Income Tax (Qualifying Plant Init Allowances) Rules 1998 had to be interpreted subject to t Income Tax (Qualifying Plant allowances) (No 2) Rules 19 In the event of conflicts, the Income Tax (Qualifying Pla allowances) (No 2) Rules 1997 would prevail.

INCOME TAX (QUALIFYING PLANT ALLOWANCES) (NO 2) RULES 1997 [PU(A) 474/97]

The Income Tax (Qualifying Plant Allowances) (No 2) Ru 1997 shall have effect in respect of qualifying pl expenditures incurred on or after 17 October 1997.

Property developers, contractors, timber industries ,tin min industries and plantation industries would now only be a to claim an initial and annual allowances rate of 10% each the imported heavy machinery on the provision of machin or plant incurred and in used for the business.

The followings are the specific types of assets subject to initial and annual allowance rate of 10% each to be clai by each industry:-

INDUSTRY	TYPES OF IMPORTED HEAVY MACHINER
1. Building and construction	Earth moving plant, heavy equipment bulldozers, ditchers, excavators, graders, loaders, rippers, rollers, rooters, scrapers, shovels, tractors
2. Timber	Heavy equipment bulldozers, tractor engi tractors and timber haulage vehicles.
3. Tin mining	Earth moving plant and heavy equipment.
4. Plantation Industry	Earth moving plant and heavy equipment.

INCOME TAX (QUALIFYING PLANT ALLOWANCES)(CONTROL EQUIPMENT) RULES 1998 [PU(A) 295/98]

The legislation of Income Tax (Qualifying Plant Allowances)(Control Equipment) Rules 1998 is to response to the emerging importance of the environmental issues in Malaysia. Any company that has incurred qualifying capital expenditures on the provision of control equipment used in the business would be eligible for an initial allowance rate of 20% and annual allowance of 20%. This would mean that the full reliefs of the capital expenditures are given in three years.

Control equipment is defined in the rule to include equipment and facility used for collecting wastes, for limiting pollution of the environment, for indicating or recording or warning of excessive pollution and for securing more efficient use of the equipment. Two main categories of the assets have been specified in the schedule as follows :-

1.	Sewage and industrial effluent treatment plant facilities	Mixing tank, Sedimentation tank, filter press, neutralization tank, variable speed decanter centrifuge, aerators/aeration facility, automatic level control submersible pump, ultrasonic flowmeter, automatic pH controlled pump, drums for sludge storage, effluent drainage system, clarifying tanks/precipitation tanks, sludge holding tank, treatment chemicals, wastewater recycle equipment, carbon filter
2.	Air pollution Control equipment	Electrostatic precipitator, cyclone, bag filter, water scrubber, black smoke density recorder, black smoke alarm equipment, chimney/gas stack sampling equipment, water sprinkler, incinerator, carbon filter, gas absorption materials, packing material for water scrubber

Although the Income Tax (Qualifying Plant Allowances) (Control Equipment) Rules 1998 was gazetted on August 1998, nonetheless it take effects from the year of assessment 1996. Company that had incurred the above qualifying expenditures and in used for the business should submit a revised tax computation to take advantage of the accelerated rate of capital allowances. This would result some cash refund to the company.

INCOME TAX (QUALIFYING PLANT ALLOWANCES) (COMPUTERS AND INFORMATION TECHNOLOGY EQUIPMENT) RULES 1998 [PU(A) 187/98]

Companies that had incurred qualifying plant expenditures on the provision of computers and information technology equipment and in used for the business would be available to an initial allowance of 20% and an annual allowance of 40%. This would mean that the full relives of the capital expenditures are given in two years.

Information technology equipment includes equipment used in gathering, processing and communication of information through computerization and telecommunications combined.

The rule had specified the qualifying plant expenditures qualifies to the accelerated rate of capital allowances would include access controls systems, banking systems, barcode equipment, bursters/decollators, cables and connectors, computer assisted design, computer assisted manufacturing, computer assisted engineering, card readers, computers and components, central processing units, storage, screen, printers, scanner/reader, accessories and communications and network.

The tax authorities had provided with a much more detailed listing on the above plant expenditures. Users can obtained from the tax professional bodies such as MIA, MIT or MACPA.

It should be noted that Income Tax (Qualifying Plant Allowances) (Computers and Information Technology Equipment) Rules 1998 was gazetted on May 1998, nonetheless it take effects from the year of assessment 1996. Company that had incurred the above qualifying expenditures and in used for the business should submit a revised tax computation to take advantage of the accelerated rate of capital allowances. This would result some cash refund to the company.

CONCLUSION

It is hope that the respective authorities should legislate the amendments timely and allow the amendment to take effect progressively rather than retrospectively. It would be more burdens on the tax authorities to entertain revised of tax computations, issued of reduced assessments and also on the taxpayers' time.

QUOTATION

Undertake something that is difficult;
it will do you good. Unless you try to do something beyond what you have already mastered,
you will never grow.

By **Ronald E. Osborn**

A Critical Review of Reinvestment Allowances

by
Choong Kwai Fatt, Tax lecturer, Faculty of Business and Accountancy, University Malaya

1. INTRODUCTION

Reinvestment Allowance is an investment incentive available to both manufacturing and also agriculture sectors that have incurred capital expenditure for the purpose of automation, expansion, modernization or diversification. The rules to claim reinvestment allowances have been revised with effect from Year of Assessment 1998 (amendments to Sch 7A, Income Tax Act 1967) and the eligibility to claim is more stringent than prior years.

Inland Revenue Board had issued an Income Tax Ruling (KCP 1998/1) on 6 April 1998, which explain the amendments to Reinvestment Allowance. The objective of the article is to highlight these changes and also hope that the Government can reconsidered relaxing on the tax compliance or abolished some of the rules.

2. THE ELIGIBILITY

Reinvestment allowance is now available to the company if all the following conditions have been complied with: -

(i) the company is resident in Malaysia;
(ii) had incurred qualifying expenditures for either expansion, modernizing or automating, or diversifying its existing business within the same industry;
(iii) has been in operation for at least 12 months and
(iv) has shown an increase in productivity in the basis period where qualifying expenditures are incurred or the following basis period.

Reinvestment allowances are available for a period of 5 consecutive years of assessment beginning from the year of assessment in which the capital expenditure was first incurred. In the event the asset is disposed within two years from the date of acquisition, reinvestment allowance will be withdrawn.

3. THE DETERMINATION OF 12 MONTHS PERIOD

With effect from year of assessment 1998, company that wish to claim reinvestment allowances must have been in operation for at least 12 months. The determination of the 12 months period may overlap two basis periods.

EXAMPLE 1

Cepat Masak (Manufacturing) commenced manufacturing operations on 1 March 1997 and closed its accounts to 31 December. It then adopts 31 December as the year-end. The financial periods are as follow:-

1.3.97 - 31.12.97
1.1.98 - 31.12.98

The basis period for the two years of assessment would be

Y/A 1998	1.3.97 - 31.12.97
Y/A 1999	1.1.98 - 31.12.98

The company would be eligible to claim reinvestment allowances for any capital expenditure incurred from 1.3.9 onwards as it would have satisfied the 12 months period.

EXAMPLE 2

If Cepat Masak (Manufacturing) closes its first set of accoun to 30 Jun and thereafter, the financial periods are as follow

1.3.97 - 30.6.1997	(4 months)
1.7.97 - 30.6.1998	(12 months)
1.7.98 - 30.6. 1999	(12 months)

The basis period for the first two years of assessment would be

Y/A 1998	1.3.97 - 31.12.97 (10 months)
Y/A 1999	1.7.97 - 30.6.98 (12 months)
Y/A 2000	1.7.98 - 30.6.99 (12 months)

The company would have an overlapping period from 1.7 - 31.12.97 as it would falls into both year of assessment 19 and 1999. Any adjusted income would be tax twice but l only allows once.

It is unclear whether such an overlapping period would taken into account in computing the 12 months period. does, the company would be eligible to claim reinvestm allowances for any capital expenditure incurred from 1. onwards. In the event that overlapping period is not t allowed for the determination of 12 months period, then qualifying expenditures incurred on 1.3.98 onwards woul eligible for RA.

hould be noted that the overlapping period is used for the rmination of basis period for a year of assessment for ion purposes. Any qualifying capital expenditure incurred g the overlapping period would only be given RA in the asis period.

PLE 3

pat Masak (Manufacturing) closes its first set of account 28 February and thereafter, the financial periods would s follow:-

97 - 28.2.1998
98 - 28.2.1999

asis period for the two years of assessment would be e with the financial period. The company would only ligible to claim reinvestment allowances from 1.3.98 ards.

RODUCTIVITY

oncept of productivity is crucial for the claimed of stment allowances. After incurring the qualifying capital nditures, the company must show an increased in ctivity either :-

the basis period for the year of assessment the claim make or
the basis period in the following year of assessment. order to be eligible for reinvestment allowances.

roductivity to be achieved by the company is measured s of process efficiency (PE). The formula will be :-

= Output - BIMS
Input - BIMS

E ratio would only apply to the manufacturing company t to the agriculture sectors.

Component of Output

OUPUT	RM	RM
Sales		XX
return inwards		(x)
discounts allowed		(x)
rebate		(x)
ales		XX
g Stock	X	
opening stock	(x)	X
n Process - Closing	X	
ork in Process - opening	(x)	X
onstruction		X
e from sale of goods purchased same condition		X
e from services rendered		X
scrap and by products		X
Output		XX

In computing the total output, non operating income such as Investment income (interest received, rent received), gain on disposal of investment (shares, bonds, debentures or properties), gains on foreign exchange are excluded.

4.2 Component of Input

TOTAL INPUT	RM
Materials consumed	XX
Supplies	
- stationery, packaging materials, accessories, tools part for repairs, maintenance	XX
Consumables	X
Printing	X
Lubricants	X
Cost of goods sold in same condition	X
Utilities (water, electricity, fuel)	X
Payment to contractors	X
Repair and maintenance for plant and machinery	X
Storage cost	X
Purchases	X
Professional services	
- advertising, audit, legal services, consultancy, tax and other professional charges	X
Acquisition of patent/trademark	X
Royalty payment	X
Salaried and wages (inc EPF and Socso)	X
Director fees	X
Staff amenities	
- uniforms, benefits in kind, scholarship, grant given to employees and immediate family	X
Depreciation	X
Interest /Bank Charges	X
Approved donation	X
Total Input	XX

In computing the total Input, the non operating expenses such as bad debts, loss on disposal of investment (shares, bonds, debentures or properties), loss on foreign exchange, stock written off are excluded.

4.3 Component of Bought in materials and services (BIMS)

The BIMS is a subset of the component of Input, which is make out of the followings:-

BIMS	RM
Materials consumed	XX
Supplies	
- stationery, packaging materials, accessories, tools part for repairs, maintenance	XX
Consumables	X
Printing	X
Lubricants	X
Cost of goods sold in same condition	X
Utilities (water, electricity, fuel)	X
Payment to contractors	X
Repair and maintenance for plant and machinery	X
Storage cost	X
Purchases	X
Professional services	
- advertising, audit, legal services, consultancy, tax and other professional charges	X
Acquisition of patent/trademark	X
Royalty payment	X
BIMS	XX

5. INCREASED IN PRODUCTIVITY

Although the Process Efficiency (PE) ratio is introduced in year of assessment(Y/A) 1998, nonetheless the PE for Y/A 1997 has to be computed in order comparison can be done. In order to qualify for Reinvestment allowances(RA) in Y/A 1998, the company must show an increased of the PE in Y/A 1998 as compared to Y/A 1997.

EXAMPLE 4

Sedap Makan Sdn Bhd, a manufacturer of curry powder makes a claim for RA in Y/A 1998 in respect of automation project. The company PE for Y/A 1997 was 1.2 and the PE for Y/A 1998 was 1.4. The company is entitled to RA.

If a company is unable to achieve an increased in PE in Y/A 1998, no RA is to be given. However, if the PE is achieved in Y/A 1999 (the immediately following year of assessment), RA would be given in Y/A 1998. This would mean that the company is given a grace period of two years to justify the increased of PE.

EXAMPLE 5

Using Example 4, if the company PE for Y/A 1997 was 1.3 and the PE for Y/A 1998 was 1.1, the company's claimed for RA for Y/A 1998 would be rejected. The Company PE for Y/A 1999 is 1.2, which is higher than Y/A 1998, the claim for RA made by the company for Y/A 1998 can now be given.

It should be noted that the company would continue to submit the claim for RA in Y/A 1998 even though in that year it would not eligible for RA due to the PE ratio. A computation of the PE ratio for Y/A 1999 has to be submitted to the IRB to show the increased of PE in the following years of assessment reinstate the RA claim in Y/A 1998.

During the 5 years period that the company is eligible for R the company has to show an increased in PE in the year claim or in the immediate following years. The computati of PE is reference to the overall company performan notwithstanding that the company may undert diversification/modernization/automation/expansion specific division or project.

6. FIVE CONSECUTIVE YEARS

The reinvestment allowance is now only available to company once for a period of five consecutive years. It is longer based on projects. The determination of 5 years begin once a claim for RA is made for a year of assessm notwithstanding that the company may not incur qualifying expenditure for all the 5 years.

EXAMPLE 6

Sedap Makan Sdn Bhd, a manufacturer of curry powd decides to claim for RA in Y/A 1998 in respect of automati project. The company PE for Y/A 1997 was 1.4 and the P for Y/A 1998 was 1.8. The company is entitled to RA.

The company plans to incurred qualifying expenditure as follows:

Y/A	Qualifying Project	Capital Expenditure	P
1997	Expansion	RM300,000	1.
1998	Automation	RM200,000	1.
1999	Modernization	RM600,000	1.
2000	-	-	1.
2001	Diversification	RM100,000	2
2002	-	-	2

The company claim for RA for each of the yeas of assessment 1997-1999 and 2001.

The new rule for reinvestment allowances applies from of assessment 1998 onwards. RA would be given for Y/A 1 and this would not fall into the computation of 5 years.

Since the first capital expenditure was incurred in Y/A 1 the 5 years will thus commenced from Y/A 1998 - Y/A 2 notwithstanding that no RA was claimed in Y/A 2000 2002. The company would not be entitled for any R subsequent years even though the objective of the qualif expenditure incurred was for expansion, modernizatio diversification.

6.1 Tax Planning

Companies are advise to pre plan the incurring of the ca expenditures before embarks into any qualifying pro because once claim is made for a year of assessment, the pe of entitlement will commence and the period will lapse the following four years of assessments.

Alert

determination of 5 years is by reference to year of ssment and not the actual 5 years period. A company red qualifying capital expenditures at the last date of the cial period will nonetheless constitute a year of ssment for RA purposes. As such, one should always strive sure capital expenditures to be incurred at the beginning e financial period so to maximize the 5 years period.

Inland Revenue practice

nland Revenue informed in a dialog held on 25 June 1998 the professional bodies that the period of 5 years ences in the year when the RA is granted by the tax rities and not when the company is first eligible to make s made) a claim of RA.

MPLE 7

mon Toys manufacturing has been in operation since The company undertook diversification in Y/A 98 and rring the following capital expenditures:-

Y/A	CAPITAL EXPENDITURE	PE
1997	-	1.8
1998	RM78,000	1.6
1999	RM65,000	1.5
2000	RM45,000	1.3
2001	RM32,000	1.4
2002	-	1.2
2003	RM15,000	1.3

company makes the RA claim in Y/A 1998. However, uld not qualify for RA claimed due to the PE ratio. The pany would only entitled RA in Y/A 1999 and thus the rs would commence from Y/A 1999 - Y/A 2003.

QUALIFYING CAPITAL EXPENDITURES

qualifying capital expenditures that is eligible for estment allowances refers to plant, machinery and strial building that are involves in the automation, nsion , diversification or modernization of the projects.

event the plant and machinery is purchased outright by cash or loan/debt, the full qualifying capital nditures will be eligible for reinvestment allowances. ever, if such plant and machinery is acquired by way of purchase, only the capital portion made by the company on installment paid in the basis period for a year of ssment will be allowed for the claim of RA.

laim of RA based on installment paid on any particular and machinery is subject to the 5 years rule as discussed

EXAMPLE 7

Elite manufacturing undertakes expansion project on 1 May 1998. A fully computerized plant is purchased under hire purchase. The company commenced manufacturing on 1 July 1996 and closed its accounts to 30 June. The following are the schedule of capital expenditures incurred:-

Basis period	Y/A	Hire Purchase payment (capital portion)	PE
1 Jul 96 - 30 Jun 97	98		1.1
1 Jul 97 - 30 Jun 98	99	35,000	1.3
1 Jul 98 - 30 Jun 99	00	49,000	1.0
1 Jul 99 - 30 Jun 00	01	49,000	0.8
1 Jul 00 - 30 Jun 01	02	49,000	1.2
1 Jul 01 - 30 Jun 02	03	49,000	1.5
1 Jul 02 - 30 Jun 03	04	42,000	1.8

Since the company make the RA claim in Y/A 99, the 5 year will commence from Y/A 99 - 03. The qualifying capital expenditure incurred for Y/A 04 will not qualify for RA.

The RA claim is further subject to the Process efficiency Ratio. Qualifying capital expenditure incurred for Y/A 00 would not qualify for RA because:-

(i) the PE ratio is 1.0, which is below the prior year 1.3
(ii) the following year's PE is only 0.8 which is below 1.0

For hire purchase transactions, the tax authorities only require the company to make a formal application for RA in the first years of assessment that qualifying projects are undertaken. For the subsequent years, the company needs only to claim RA in the tax computation.

7.1 Constructed industrial buildings

The constructed industrial building is only being eligible for RA claim if such industrial building is completed and put into the use either for automation, expansion, diversification or modernization. Building work in progress is no longer be allowed for RA claimed.

8. DISPOSAL OF ASSET WITHIN TWO YEARS OF ACQUISITION

A Company that has claimed RA on plant, machinery or industrial building may be subjected to the withdrawal of RA in the event the asset is disposed of within two years from the date of acquisition of such qualifying expenditures. (Para 2A , sch 7A). Disposal is defined to mean " sold, conveyed, transferred, assigned, or alienated with or without consideration".

The insertion of para 2A, sch 7 took effect from year of assessment 1999. This would mean that asset acquired in Y/A 1997 which had claimed RA would not subject to withdrawal if there exist any disposal in Y/A 1998. It should be noted that the determination of the two years is by reference to the exact years and not by reference to years of assessment.

The tax implication of the withdrawal of RA would be as follows:

(a) the reduction of tax exempt amount in the tax exempt account
(b) additional tax payable in the prior years as if no RA is given to that particular years
(c) additional tax payable in the year of disposal as balancing charge (based on actual capital allowances claimed) will be computed.
(d) A reduction in the section 108 accounts to account for the dividend paid out from the RA withdrawn.
(e) Section 108(5) charge may arise in the event of the short fall of section 108 account.

It is the responsibilities of the company to maintain a schedule of asset acquired and inform the tax authorities as and when the disposal of assets occur and also volunteer the withdrawal of RA. Failing which, this may result penalties for incorrect return (sec 113) or willful default (sec 114).

9. MECHANISM /TAX COMPUTATION OF RA

The detail mechanism can be obtained from the textbook written by the author "Advanced Malaysian taxation - Principles and Practice (1998) Third edition p298-304.

10. REFORMS

The followings should be reconsider by the policy makers in relation to RA.

10.1 Five (5) consecutive years of assessments

To be competitive and efficiency in manufacturing, it is essential to expand, diversified , modernize or automate its operation whenever it is necessary. It will be disincentive to limit the RA to only 5 years. Asia Pacific countries like Thailand, Japan, Korea is in the forefront to attract foreign investment and Malaysian would certainly face a difficult position to compete with these countries. In the economic downturn, the Government should encourage manufacturing companies to review its operation process and encourage capital intensive projects and not to discourage it.

The 5 years rule can be easily overcome by incorporating many similar companies to carry out such expansion/ diversification/automation/expansion. This would cause money and more time involved. It is therefore hoping the Government would withdraw the five years limit.

10.2 PE ratio

It is anticipated many companies will not show an increase in the PE ratio in the economic downturn. Although the component of output/input/BIMS has been revised but it is hope that the element of "depreciation and interest charges' be excluded from the "Total Input" and "BIMS".

The company has no control over the fluctuation of the interest charges as it depends a lot on the Government policy and decision of the Financial Institutions. The efficiency of the company should not be therefore influence by such factor. Company should not be denied of RA due to its borrowi from a bank with a high base lending rate (BLR).

Depreciation is arbitrary, depending on the depreciation ra adopted by the company. The depreciation charge is mere an accounting allocation of cost and it varies betwe companies in the same industry. The efficiency of the compa should not be therefore influence by such factor and compa should not be denied of RA due to the adoption of hi depreciation rate.

10.3 Disposal within two years

The Inland Revenue would adopt a literal interpretation the meaning of "disposal". The companies may transfer plant and machinery to another company in a scheme restructuring or reorganization. The RA will be withdrawn long the transfer is within two years of its acquisition.

Restructuring exercise is inevitable in the current economy. is hope that the Act should amend to allow Director Gener to exercise its discretion on the withdrawal of RA alternatively the RA should not be withdrawn if the dispos can be justified commercially.

10.4 Increased in PE

The RA would only be granted in the event the company c show an increased of PE either in the year or the followi years. However, the Income Tax ruling on the reinvestme allowance fail to defined the "minimum increased". Would increase of PE by 0.01 or by 0.005 be accepted to qualify f RA? In the opinion of the writer, it is!

11. DEFERMENT ON IMPLEMENTATION OF PE

The Minister of International Trade and Industries, Dat Rafidah Aziz had announced in the press that the PE rat would not be used in Y/A 1998 for the claim of RA. Howev there is no amendment gazeted for such rectification. practice, the tax authorities would require the manufactur to continue fulfil the criteria on the PE. It is hope that su amendments would be announced in the coming 1999 budg

12. APPLICATION FORM

The application form for the reinvestment allowance is Bora EPS/BT/1/1998. The IRB had decided to repeal Part F of t form with effect from year of assessment 1998 and subseque years. This would mean that the application of RA no long require a report by the qualified external auditor (The I reference letter LHDN.01/35(S)/42/51/64 kit.3 dat referred).

13. CONCLUSION

The company should understand the recent amendment the RA in order to maximize the tax benefits. It is the auth wish that the Government should reconsider some reform the RA in order to assist the manufacturer at this difficult ti

MALAYSIAN INSTITUTE OF ACCOUNTANTS
AND
MALAYSIAN INSTITUTE OF TAXATION

Memorandum To The Minister Of Finance For The 1999 BUDGET

the theme for the 1998 Budget, rds Sustaining High Quality th" was set in the early part of 1997, laysian economy "was coasting rather smoothly in the first half of ear until sentiments on the my took a sudden turn in July the ringgit came under heavy g pressure." (NST 30 August 1997) then, the regional financial crisis become more intense and spread, making it necessary for makers to realign fiscal and mic strategies to deal with the atic changes in the economic on.

first half of 1997, macroeconomic management was focussed on g the economy towards a more able growth path. In the second he focus was to restore stability nfidence in the financial markets. Report 1997)

ealignment of policy objectives for measures that involve fiscal and regulatory changes, which ernment has already put in place ecial sessions of Parliament since Day 1997. For the 1999 Budget, sals on tax measures by the sian Institute of Accountants and Malaysian Institute of on (MIT) will focus on the ng:-

easures that enhance the ectiveness of policy decisions that have been implemented with a view to bringing about economic recovery, or to address needs arising as a result of the economic slowdown.

- Measures to streamline and improve efficiency of tax administration and collection

Some of these proposals have been submitted in previous Memorandums to the Honorable Minister of Finance. However, many of them have taken on new significance in the current situation of an economic downturn, for example, the proposal to exempt foreign income remitted back to Malaysia by resident individuals (Proposal no. 6).

The economic slowdown can also be viewed as providing an opportunity for consolidation and strengthening of the framework for administering and collection of taxes. While the economy takes a breather (so to speak) it is time to "oil the tax collection machinery" so that when economic recovery comes about, it will be ready to collect increased revenue at optimum efficiency. Thus, proposals touching on tax administration which have been put forward in the past, should be considered for implementation now.

These proposals are explained in detail in the attached Appendix.

The following is a summary of the proposals:-

1. REINVESTMENT ALLOWANCE (RA)

We are concerned with the stringent qualifying conditions for the RA incentives, the rather complicated method to measure efficiency and the absence of provisions for inter group transfers as a result of restructuring. Further when the provision was proposed last year, its effect was backdated to assets acquired before Budget Day. We are of the opinion that in view of the current economic downturn, the implementation of the RA Guidelines be deferred to a more appropriate time and the proposal made except for the anti-avoidance provision be withdrawn so as to encourage reinvestment by companies.

2. LEGISLATION TO BE PROSPECTIVE

We would suggest that any legislative changes should be prospective instead of retrospective where it results in additional taxes.

3. SALES TAX AND SERVICE TAX

(a) Bad debts
Presently, vendors of taxable

goods and services are required by legislation to shoulder the burden of sales tax or service tax payable in respect of sale of goods or services that have become uncollectible. It is proposed that the relevant Acts be amended to allow a taxable person to remit service tax to the respective tax offices only when payment for the services has been received. In addition, for supplier of goods, provision should be made to allow companies to claim bad debts where the debts are not collectable.

(b) Increase of sales tax turnover limit from RM100,000 to RM500,000

As a means to promote small-scale industries, the threshold for sales tax should be raised to RM500,000.

4. ABOLITION OF RESTRICTION ON DEDUCTION FOR BONUS PAYMENTS

The re-introduction of restriction on deduction of bonus payments to two-twelfths of the employee's wages or salary with effect from 17 October 1997, is a step backwards as this would be contrary to the government's efforts to encourage revitalisation of the economy. The restriction is a disincentive, discouraging efforts to effectively reward productivity or efficiency.

The re-introduction of the restriction is unnecessary at this time, as many employers are already curtailing excessive bonuses in the face of economic stringency. It is proposed that the restriction be abolished.

5. EXEMPTION OF COMPENSATION FOR LOSS OF EMPLOYMENT

It is proposed that the amount of compensation for loss of employment that is eligible for exemption under paragraph 15 of Schedule 6 of the Income Tax Act 1967, be increased from RM4,000 to RM6,000 for every completed year of service with the same employer or with companies in the same group.

6. EXEMPTION OF FOREIGN SOURCED INCOME FOR INDIVIDUALS

We very much welcome the recent announcement that tax exemption for income received from overseas by companies residing in Malaysia has been expanded to individuals effective from 20 May 1998 to 31 December 1998. The tax exemption treatment on foreign income remitted into Malaysia by resident individuals has taken on strategic significance in the current economic crisis. Such an exemption will provide an incentive for Malaysians with money deposited in foreign banks to remit their money back to Malaysia in response to the government's call for Malaysians to play their part in helping to bring about recovery of the Malaysian economy. On a long term basis, it is proposed that the exemption be a permanent one and thus not restricted to a particular time period.

7. ALIGNMENT OF PERSONAL INCOME TAX RATES WITH CORPORATE TAX RATE

The reduction of the company tax rate from 30% to 28% in the 1998 Budget had resulted in the following disparities: -

Companies	Rate
Resident	28%
Non-resident	28%

Individuals	Rate
Resident (maximum rate)	30%
Non-resident (flat rate)	30%

It is proposed that the tax rates [illegible] individuals be reviewed so as [illegible] align them with the corporate [illegible] rate of 28%. It is suggested that [illegible] maximum tax rate for individu[illegible] should be the same as the corpo[illegible] tax rate. It is also hoped that [illegible] government will review the ra[illegible] applicable to lower income gro[illegible] so as to provide some form of re[illegible] to those hit by retrenchment, p[illegible] cuts and loss of real income throu[illegible] inflation.

8. PAYMENT OF INTEREST FO[illegible] TAX OVERPAID BY TAXPAYERS

It is proposed that in cases of l[illegible] refunds of tax overpaid, inter[illegible] should be computed and paid to [illegible] taxpayer on the amount of [illegible] overpaid if refund is made one y[illegible] after the year of assessment [illegible] which the tax is payable, or one y[illegible] after the payment of tax.

9. EXEMPTION OF INCOME OF UNIT TRUST HOLDERS

In the context of current effo[illegible] made to mobilize capital from sm[illegible] investors by promoti[illegible] investments in unit trusts, it [illegible] proposed that recipients of inco[illegible] from unit trusts be totally exempt[illegible] from tax on that income. T[illegible] exemption should also be extend[illegible] to income from closed end fund[illegible]

10. SIMPLIFICATION OF CAPIT[illegible] ALLOWANCE COMPUTATIO[illegible]

The rates of capital allowa[illegible] devised since 1980s should [illegible] simplified to facilitate computat[illegible] by having fewer categories un[illegible] Section 3 of the Income Tax A[illegible] 1967. In addition, cost of small as[illegible] items that do not exceed RM1,[illegible] should be allowed as a deducti[illegible] expense if it is the company po[illegible] to write off such assets in th[illegible] accounts.

FEMME SOLE STATUS FOR WOMEN

A married woman should be allowed to declare her income in a return form issued in her own name, although it may not be necessary to register separate files for husband and wife.

FEES FOR PROFESSIONAL SERVICES

It is proposed that expenses like fees for Annual General Meeting expenses, cost of printing Annual Reports and share registration expenses be allowed as deductible expenses under section 60F of the Income Tax Act 1967, in addition to those now allowed.

All permitted expenses should also be allowed in full as they are operating expenses incurred to comply with requirements of the law.

INCLUSION OF ACCOUNTANTS AS "INVESTMENT ADVISERS"

Accountants possess the degree of competence in knowledge and experience required to qualify to be included as "investment advisers" as defined in the Securities Industry Act, 1983.

APPENDIX

1999 BUDGET
PROPOSALS FOR THE MEMORANDUM TO THE MINISTER OF FINANCE

The following are the proposals by the Malaysian Institute of Accountants and Malaysian Institute of Taxation for the 1999 Budget.

1. REINVESTMENT ALLOWANCE

Reinvestment allowance (RA) is given in respect of capital expenditure on a factory, plant or machinery used in Malaysia for a qualifying project. The announcement of the following qualifying conditions for the incentives are of great concern to the Institutes :-

- Eligibility for the allowance will depend upon the company having been in operation for not less than twelve months.
- A company in manufacturing will be required to show an increase in productivity in the basis period (for the year of assessment) in which the capital expenditure is incurred or in the following basis period.
- The time period during which capital expenditure may be eligible for relief will be five basis years beginning with that in which the capital expenditure was first incurred.
- The allowance will be withdrawn or not given in respect of an asset which is sold or otherwise disposed of within two years of acquisition.
- In order to qualify for set-off against 100% of statutory income, the project must be located in a promoted area or have achieved the level of productivity prescribed by the Minister of Finance.
- 'automating' the company's existing business (in addition to 'expanding' and 'modernising') will now be included as part of the definition of a qualifying project.

Proposal

We appreciate that incentive should only be given for increase in productivity, but in view of the current economic downturn, the implementation of the RA Guidelines should be deferred to a more appropriate time.

Further we would suggest the following

- provision should be made to allow transfer within groups when they restructure without any application of clawback.
- the Process Efficiency ratio calculation should be reviewed to take into account the difference that arises where financing of an expansion project is done by way of external borrowing compared to equity/internal funds.

2. LEGISLATION TO BE PROSPECTIVE

We would suggest that any new legislation to be implemented should require prospective application rather than retrospective where it results in additional taxes. For example, if a particular type of expense is to be disallowed as an expense, it would be fair to provide advance notice of the change by way of stating that the change would apply from year of assessment 2000 rather than year of assessment 1999 (which means the financial year 1998). Otherwise, expenditure which has already been incurred would not be deductible.

3. SALES TAX AND SERVICE TAX

(a) Bad debts

Present legislation in respect of sales tax and service tax makes no provision

for uncollectible debts. Both sales tax and service tax have to be remitted to the respective tax offices after expiration of a stipulated period[1] even though payment has not been received in respect of the sale of goods or services.

This lack of provision in respect of uncollectible debts has always been an issue giving rise to much dissatisfaction. This is because of the onerous burden which is unfairly imposed on the vendors of the goods or services, who have to bear upon themselves the expense of tax payable on sales which have become uncollectible. The inequity of this situation is more keenly felt by many businesses in the present difficult times.

Proposal
It is proposed that the relevant Acts be amended so that service tax is only required to be remitted to the relevant tax offices when payment for the services has been received. Provision for bad debts should be allowed for the supplier of goods.

(b) Increase of sales tax turnover limit from RM100,000 to RM 500,000

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

4. ABOLITION OF RESTRICTION ON DEDUCTION FOR BONUS PAYMENTS

The amendment to Section 39 of the Income Tax Act 1967 included in the Finance Act 1998, which re-introduced the restriction on deduction for bonus payments to two-twelfths of the employee's wages or salary, is similar to the provision which was effective up to the year of assessment (YA) 1988. The restriction was abolished with effect from the YA 1990, but has now been reinstated with effect from 17 October 1997.

The restriction results in a higher cost to employers wishing to reward productive workers by way of higher bonuses, and a disincentive to employees, discouraging their efforts to improve productivity or efficiency. The removal of the restriction in the YA 1990 was much welcomed by all parties involved, namely, employers a employees.

The timing of the re-introduction, at a point of time wh many employers were already curtailing bonuses in t face of economic stringency, is not appropriate. Mar forces, rather than a legislative restriction, would probab be more effective.

Proposal
It is submitted that the restriction should not have be re-imposed, and it is proposed that it should be abolish

5. EXEMPTION OF COMPENSATION FOR LOSS O EMPLOYMENT

Presently, compensation for loss of employment is exem from income tax in the following manner: -

(a) In full if the Director General is satisfied that t payment is made on account of loss of employm due to ill health, or
(b) In the case of payment made in connection wit period of employment with the same employer with companies in the same group, in respect of amount calculated by multiplying the sum RM4,000 by the number of completed years of serv with that employer or those companies.

Proposal
It is proposed that the amount qualifying for exempti under item (b) be increased to RM6,000 for eve completed year of service with the same employer or w companies in the same group.

Accepting that retrenchment is going to be a feature the economic downturn, the increase in the amo eligible for exemption would be another way by wh the Government can provide positive assistance to th hit by such a misfortune.

6. EXEMPTION OF FOREIGN SOURCED INCOME F INDIVIDUALS

Since the YA 1995, foreign-sourced income remitted Malaysia by resident companies (except those carry on the business of banking, insurance, or sea and transport undertakings) has been exempted from inco tax. The Income Tax (Exemption)(No. 48) Order 1 extends this exemption to unit trusts with effect from 1998.

The Ministry recently announced that tax exemption income received from overseas by companies residin Malaysia has now been expanded to resident individ effective from 20 May 1998 to 31 December 1998.

Proposal
It is proposed that the above period be extended bey

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

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

31 December 1998. The basis of exemption should be the same as for companies.

The downward slide in value of the ringgit against major foreign currencies has led the Government to call repeatedly on Malaysians to remit their money (which is deposited in foreign banks) back to Malaysia. The extension of the exemption period will definitely be a pragmatic way of motivating Malaysians to heed the government's appeal for individuals to do their part in helping to bring about the recovery of the Malaysian economy.

ALIGNMENT OF PERSONAL INCOME TAX RATES WITH CORPORATE TAX RATE

The reduction of corporate tax rate from 30% to 28% was a significant and effective measure adopted in the 1998 Budget to assist businesses in surviving the current economic crisis. Following the reduction, there is now a disparity between the maximum tax rate for resident individuals (30%) and the rate of tax for companies (28% with effect from YA 1998.) There is also a disparity between the tax rate for non-resident individuals (30%) and non-resident companies (28%).

Proposal
It is proposed that tax rates of individuals be reviewed so as to align them with the corporate tax rate of 28%.

It is suggested that the maximum tax rate for individuals should be the same as the corporate tax rate. However, in reviewing the rates, attention should be given, not just to the maximum rate, but also to rates for the other income brackets as well, especially those applicable to the lower income groups. It is acknowledged that an "across-the-board" reduction of personal tax rates will need careful study and consideration at this time, when the economy is slowing down. Nevertheless, it is suggested that the Government should consider the plight of lower income groups who are inevitably the worst affected by the economic realities of retrenchment, wage reduction and loss of real income caused by inflation. Some relief from taxes for these groups will certainly be of positive assistance to them.

PAYMENT OF INTEREST FOR TAX OVERPAID BY TAXPAYERS

Refund of tax to taxpayers may be made in the following types of cases: -

(a) "Repayment" cases where the tax credit available under Section 110 of the Income Tax Act 1967 exceeds the amount of tax payable by the taxpayer.

(b) Ordinary refunds where tax deducted under the Schedular Tax Deduction scheme or paid under other compulsory payment schemes exceed tax payable by the taxpayer.

(c) Appeal cases or cases where objections have been lodged by taxpayers. Such cases require compliance with appeal procedures, and lapse of time for the appeal process to take its course.

Presently, taxpayers are not compensated in any way for delays in refunds of tax overpaid, although late payment penalties are imposed on them on tax payments made after the statutory period of 30 days after issue of the notice of assessment, and on late payments of installments of tax. Also, taxpayers who appeal or object to assessments, are required to pay the full amount of tax charged, pending settlement of the appeal.

Proposal
It is proposed that interest should be charged and paid to the taxpayer on the amount of tax overpaid if refund is made one year after the year of assessment for which the tax is payable, or one year after payment of tax.

The proposal has been submitted in previous Memorandums, and we would like to pursue with the issue on the following basis: -

(a) on the principle of equity or fair treatment for taxpayers;
(b) as an 'incentive' to reduce avoidable delays in the making of refunds of tax overpaid;
(c) as one measure to address cash flow and liquidity problems, commonly encountered by taxpayers (whether individuals or companies) in the current economic downturn.

9. EXEMPTION OF INCOME OF UNIT TRUST HOLDERS

One measure which has been adopted to aid in the recovery of the economy is to mobilize capital from small investors for investing in stocks listed on the Kuala Lumpur Stock Exchange so as to counter the current bearish trend in the market and to take advantage of the low prices at which quality stocks can now be purchased. These efforts are evidenced by the launching of several unit trust funds in the last few months, among which are the Amanah Saham Wanita (mainly for women investors), and the Teachers Investment Fund for teachers.

Currently, unit trust holders are only exempted from tax on income distributed by unit trusts out of income from specific types of investments held by the unit trust[2].

Proposal
It is proposed that investment income of unit trust holders be totally exempted from tax.

The granting of this exemption would be a timely move to ensure greater success for the efforts to mobilize capital by promoting investment in unit trusts. Such exemption will definitely make unit trusts a more attractive form of investment vis-à-vis other conventional forms of low-risk

investments like fixed deposits.

It is also proposed that the exemption be extended to income from closed end funds which are similar in many ways to unit trusts.

10. SIMPLIFICATION OF CAPITAL ALLOWANCE COMPUTATION

The present method of calculating capital allowances by which an initial allowance and/or an annual allowance is computed using different rates for each and every asset item, is tedious and time consuming.

Proposal
It is proposed that capital allowance computations be simplified. This can be done by having lesser categories of rates for computing capital allowance for tax purposes. In addition, small asset items costing less than a stipulated amount (say RM1,000), could be allowed as a deductible expense from adjusted income.

11. FEMME SOLE STATUS FOR WOMEN

The present administrative procedure in respect of the filing of a married woman's return of income is for the woman to declare her income in her husband's return form.

Proposal
It is proposed that a married woman be issued with a return form in her own name. However, registration of separate file reference numbers for husband and wife will not be necessary.

12. FEES FOR PROFESSIONAL SERVICES

Presently, investment holding companies are only allowed a portion of "permitted expenses" listed under section 60F of the Income Tax Act 1967. The proportion allowed is determined in accordance with the formula given under that section.

Proposal
It is proposed that : -

(a) in addition to permitted expenses listed under sec 60F, the following expenses should be include deductible expenses: -

- Annual General Meeting
- Annual Report printing
- Share registration

(b) all permitted expenses should be allowed in because: -

- they are necessarily incurred in order to com with mandatory requirements of the Compa Act 1965.
- they are operational expenses incurred in operation of the "business" or activity which company was set up to carry on, i.e. the hol of investments.

13. INCLUSION OF ACCOUNTANTS AS "INVESTME ADVISERS"

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

It should be appreciated that accountants have exte knowledge and experience in the profitability compatibility of a wide range of businesses, operati a diversity of financial environment. Increasingly, a and services that an accountant provide inc investigations and reporting on the entities to be acqu share valuation, feasibility and viability of mergers acquisitions including the tax angle and other fina advice on capital restructuring and gearing of a com assistance in sourcing for debt or equity capital, fina planning and modeling, and corporate planning.

In the light of the above, it can be seen that an accou is well placed to be included within the meanin "investment adviser" under section 2(1) of the Secu Industry Act 1983.

Proposal
Accountants should be included as "investment advi under section 2(1) of the Securities Industry Act, 19

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[3]Under paragrph 35 of schedule 6 of the Income Tax Act 1967, the following income is exempted:-

Interest paid or credited to any individual, unit trust and listed closed-end fund
(a) in respect of securities or bonds issued by the government or
(b) in respect of bonds, other than convertible loan stocks, issued by public companies listed on the KLSE
(c) in respect of bonds other than convertible loan stock, issued by a company rated by Rating Agency Malaysia Bhd. or Malaysia Rating Corporation Bhd.
(d) in respect of Bon Simpanan Malaysia issued by the Central Bank of Malaysia

REPORT OF MEETING

BETWEEN

INLAND REVENUE BOARD (IRB)

AND

MALAYSIAN INSTITUTE OF ACCOUNTANTS (MIA)
MALAYSIAN INSTITUTE OF TAXATION (MIT)
MALAYSIAN ASSOCIATION OF CERTIFIED PUBLIC ACCOUNTANTS (MACPA)

ATE:
gust 1998

VENUE:
Bilik Mesyuarat Kecil, Tingkat 15, Blok 11,
Kompleks Bangunan Kerajaan

SUBJECT:
Auditors' Certification of
Reinvestment Allowance (RA) Claims

CKGROUND

tionally auditors are required to certification on prescribed RA s Form. However, with the duction of new RA Claims Form, has received representations from auditors recently that they are ling to give the certification as in ast. This meeting was called to e the matter.

S PERSPECTIVE

e with the trends toward self-ssment, IRB will rely more on endent third party to conduct gh verifications so as to relieve, partially, the burden of IRB from audit. However, IRB is also rned with the costs of a special ination which may reduce the tiveness of the incentives. Auditors chosen because it was thought that n verify the expenditure during ourse of their audit without ring much costs.

TTORS' CONCERN

epresentatives from accounting ssion express concern over the ng of Part F of the RA Claims Form uggest full assurance is given by ditors that the claims is in order. ctice, however, based on the s made available to them by the pany, the auditors conduct their examination in accordance with approved standards on auditing. The scope of Part F appears to be too wide for the auditors to feel comfortable.

MACPA representatives also enquire why the wording of certification as agreed between MACPA and IRB (refer Appendix attached) during a meeting in April 1996, and confirmed in October 1996, was not adopted.

IRB'S OBJECTIVES

If auditors' certification is of any use, the scope of verification must at least cover the following :

i. that the factory cost does not include land cost
ii. that the expenditure was incurred
iii. that the capital expenditure was not incurred for the replacement of parts
iv. that the capital assets acquired were not disposed of within a span of 2 years

DISCUSSIONS

Three (3) suggestions were suggested to resolve the issue:

i. that Part F of the RA Claims Form be replaced by a separate auditors' report annexed to it
ii. that the wording of Part F be amended to narrow the scope of auditors' assurance to an accepted level
iii. That tax agents be given authority to verify and certify the compliance of Schedule 7A provisions in Part F of the RA Claim Form

Representatives of auditors is of the opinion that auditors perform their verifications based on records of company made available to them and in accordance with the promulgation of MIA. Therefore it is not practical to ask them to provide total assurance on the compliance of Schedule 7A provisions in respect of the claims made.

In additions, the distinction whether an expenditure is for replacement, for modernisation or for diversification may sometimes be very subjective.

IRB suggested deletion of Part F under such circumstances and request for auditors' opinions. The MACPA have no objection against this proposal. For practical reasons, MIA and MIT preferred to retain an independent third party verification to facilitate the claims.

CONCLUSION

Nujumudin of IRB will discuss with his colleague on the deletion of Part F and shall inform representatives of accounting profession of the outcome.

OTHER MATTERS ARISING

Increased Productivity

Representatives of accounting profession enquire whether the criteria of increased productivity will be enforced in view of the recent economic downturn.

IRB indicated that although it was quoted in the newspapers that government may defer the productivity" criteria, they have not received any official letter in respect of the matter. As the law now stands, the applicant must still fulfil the criteria of increased productivity.

Model Audit Reports
Mr. Tony Seah of MIA explained to Puan Sharazad in respect of MIA's role of developing Recommended Practice Guide. A copy of MIA's Technical Bulletin on Model Audit Reports w presented to Puan Sharazad comments from IRB.

Invitation to National Body
It has been suggested that invitations extended to MIA and MIT, as natio bodies, in all IRB future dialogues respect of issues arising from accounting perspectives.

MINUTES OF THE DIALOGUE BETWEEN THE INLAND REVENUE BOARD AND THE MALAYSIAN INSTITUTE OF TAXATION HELD ON 25 JUNE 1998 IN KUALA LUMPUR

The Deputy Director-General of Inland Revenue Board welcomed representatives of MIT to the dialogue to discuss on technical and administrative matters.

DIRECTORS' FEES

It was highlighted that the IRB had confirmed at the dialogue on the 1998 Filing Programme on 27 February 1998, that Schedular Tax Deduction (STD) on directors' fees is only required when the fees are paid and not when the fees are accrued or declared, or when provision is made.

Section 25(2) of the Income Tax Act 1967 (ITA) provides that employment income shall be treated, when received, as income of the period for which it is receivable. Under section 29 of the ITA, an income is deemed to have been received in basis period if a person is entitled to income accruing in or derived from Malaysia, and is able to obtain the receipt thereof on demand.

Confirmation in respect of the following was requested:-

a) No STD is required when the respective director's accounts were credited with the relevant amount of fees as the fees have not yet been "paid". In other words, although fees may be construed as "received" by directors by virtue of section 29 of the ITA, the fees are not "paid" for purposes of STD under the Income Tax (Deduction From Remuneration) Rules 1994.

b) No STD is required when payment is made in 1999 as the amount paid is already taxed as income of the Director for the year of assessment 1998, and any outstanding tax would have to be made good by the tax payer by 31 January 1999.

In this respect, it was advised that if a general provision is made in the accounts for Directors' fees for the year ended 31/12/1997, the amount is approved at the AGM in February 1998, but the actual cheque payment is only made in January 1999, STD applies only when payment is made and not when the account of the director is credited.

Confirmation of the IRB on the following assuming that due to a delay in reporting the "receipt" of Director's fees to the IRB, an Additional Assessment for 1998 was raised (on director's fees) in November 1998, was requested:-

a) Whether the taxpayer would be required to pay the additional tax as per the notice of Additional Assessment within 30 days of the notice.

b) If the taxpayer paid the additional tax within 30 days of the Notice, please confirm that no STD is necessary when the payment for Director's fees is made in January 1999.

It was confirmed that when payment is made in 1999, no STD deduction is required as the amount is already taxed for YA 1998 and any outstanding taxes will have to be made good in January 1999. For this purpose, taxpayer m provide proof that full payment h been made, and prior approval obtained from the Director Genera

RENTAL INCOME

The following paragraph (4) in the le to the MIT dated 28 September 1996 (No. LHDN.01/95/42/51/295) reads *"Sukacita juga saya jelaskan bah pendapatan sewa daripada kompleks peja kompleks membeli belah, gudang dan kil layak dikenakan cukai di bawah seksyen 4 Akta Cukai pendapatan, 1967.*

MIT requested for IRB's advise on th understanding that this paragraph been agreed to mean that rental from unit of the type of properties lis would qualify to be taxed under sect 4(a).

The 2-3-4 rule still applies. The authorities would asses rental inco under section 4(a) for commer buildings if any of the follow categories are fulfilled:-

	TYPES	NO. OF UN (minimum
i.	Factory	1
ii.	Warehouse	1
iii.	Office Complex the whole complex within the complex	1 3
iv.	Shopping complex the whole complex within the complex	1 3

ME TAX RULING ITR 1997/1

reatment of remisier's income

er paragraph 2.5 of the above g, a deduction is allowed in respect ntra loss and losses due to buying elling out.

graph 3.2 states the particulars that to be provided in relation to a claim ontra losses etc. Among the culars listed are:

Action taken to recover the debt

Confirm whether the client has been suspended from trading and is name has been included in the KLSE's Defaulter List by submitting documentary evidence.

rmation on whether a statement the stockbroking firm showing that mount of the contra loss has been cted from the remisier's deposit or teral would be acceptable to/ ient for the IRB, in order to allow uction of the contra loss, was ested.

ssue does not arise as it was agreed by both IRB and PERSAMA atuan Peniaga Saham Malaysia). The rule in Para. 3.2 has to be rved until specific problems are d].

MPUTER AND INFORMATION HNOLOGY EQUIPMENT

1996 Budget, it was proposed that puters and other information ology equipment will qualify for al allowances at the initial ance rate of 20% and annual ance rate of 40%. To-date, this sal has not been gazetted.

has created a lot of problems for tax s as the Inland Revenue Board has rejected capital allowance s at the annual allowance rate of resulting in tax computations g to be revised. Accordingly, the lation should be gazetted as soon ossible.

The MIT requested to be informed on the current position concerning the gazetting of legislation for the above incentive.

The rate of annual allowance has been gazetted as per P.U. (A) 187. The detail of computer equipment eligible for such acceleration rate is per Appendix I. (Note: The IRB has indicated that the list is not exhaustive)

DONATIONS TOWARDS APPROVED WELFARE AND SOCIAL WELFARE PROJECT

In the 1996 Budget, it was proposed that contributions by the private sector to approved welfare and social services projects in the fields of education, health, housing infrastructure and public amenities are eligible for a deduction. The Finance Act, 1997 has inserted Section 34(6)(h) to the Income Tax Act, 1967 for this purpose and is to take effect from the year of assessment 1997.

IRB confirmation on when the guidelines for the above incentive will be issued was required. IRB advised that the guideline will be prepared by the Treasury.

TAX INCENTIVES – 1998 BUDGET PROPOSALS

Incentive for promotion of exports

In the 1998 Budget, amongst others, the following incentives were proposed:

a) Promotion of exports
   i. exemption of statutory income equivalent to 10% or 15% of the value of increased exports for manufacturers, provided that the goods exported attain at least 30% or 50% value-added respectively;
   ii. exemption of statutory income equivalent to 10% of the value of increased exports to companies which export fruits and cut flowers; and
   iii. exemption of statutory income equivalent to 10% of the value of increased exports o selected services provided by companies.

The incentives are effective from 1 January, 1998.

As such the representatives of MIT queried on when the Bill will be tabled and guidelines be issued.

IRB advised that the guideline has been drawn up and is currently being reviewed. It would be in the form of gazette order.

RPGT EXEMPTION UNDER PARAGRAPH 17, SCHEDULE 2, RPGT ACT, 1976

It was highlighted that recently, the IRB has taken the position that "prior approval of the DGIR" means that the sale and purchase agreement for the transfer of the real property must be in draft form and must not be executed when submitting the application to the DGIR for exemption. This practice has created problems in that the entire transaction cannot proceed until the draft sale and purchase agreement submitted to the IRB has been approved for exemption and this may take a considerable time.

With regards to the above, it was advised that the phrase 'prior approval of the DGIR' is a legal requirement and as such it has to be complied with.

GUIDELINES FOR VALUATION OF BENEFIT-IN- KIND (BIK) PROVIDED TO EMPLOYEES

1. The questions on the above Ruling are contained in our letter dated 10 February 1998. The IRB's answer/comments are sought in respect of the following questions in the letter:-

   3. Revised value of BIK for cars provided
   (The following is an observation/ proposal with regard to the above.)
   It is noted that the IRB has in revising the BIK values for cars taken into consideration the inflation rate over the past years and the substantial price increase of cars. If this be the basis, the qualifying expenditure claimable on

cars which is currently restricted to RM50,0.00 (effective from YA 1991) should also be revised.

This proposal involves policy matters.

6. Club memberships
Please confirm :-

- *(Reply given in letter to MICCI)*
- *(Reply given in letter to MICC1)*
- *In cases where club membership subscriptions are treated as BIK, please confirm that the expense will be accorded deduction for the employer?*

It was confirmed that monthly subscriptions paid by an employer on behalf of his employee are deductible.

7. Skim Opsyen Saham
Would paragraph 6.2 of the Bahasa Malaysia version of the circular LHDN.01/35/(S)/51/224-5.....be applicable where the stock option scheme is operated by the offshore (non-resident)parent company and stock options in respect of the offshore non-Malaysian parent company are granted direct to employees of the local subsidiary company?

It was confirmed that the circular is applicable where stock option scheme is operated by the offshore (non-resident) parent company and stock options in respect of the offshore non-Malaysian parent company are granted direct to employees of the local subsidiary company. This is because though benefit is paid overseas nevertheless it is an employee benefit to the Malaysian office.

2. It is suggested that explanations provided on BIK in the letter to the MICCI be incorporated into the Guidelines so as to provide greater certainty.

REAL PROPERTY COMPANIES

In the 1998 Budget, it was proposed that Paragraph 34A, Schedule 2 of the RPGT Act, 1976 be amended whereby the formula A/B x C to determine the acquisition price of RPC shares be applied only where subparagraph 2(a) applies, i.e. on the date the relevant company becomes a real property company. Where subparagraph 2(b) applies, the acquisition price of RPC shares is the amount or value of consideration in money a money's worth or the consideration equal to the market value of the asset. In addition it was proposed that the proviso to subparagraph (2) i.e., "provided that the relevant company acquires additional real property or shares or both, the defined value of which is equivalent to or exceeds 50% of the defined value of the real property or shares or both it already owns, then the date of acquisition of the chargeable asset shall be deemed to be the date of acquisition of the additional real property or shares or both" be deleted with effect from 17 October, 1997.

There has been indications that certain IRB officials have interpreted the above amendments to affect all disposals of RPC shares taking place from 17 October, 1997 onwards regardless that acquisition of the shares was before 17 October 1997. It would be equitable that the change be applied only to disposal of shares acquired after 17 October 1997. As such the position of IRB was requested.

The IRB confirmed that the change is applicable for disposals on or after 17 October 1997.

APPLICATION OF CASE LAW DECISIONS

1. **Pernas Securities Sdn Bhd v Ketua Pengarah Jabatan Hasil Dalam Negeri**

   Based on the above decision there is no legal basis for enforcing restriction of deduction for interest expense on the "source by source" basis. However, it appears that certain IRB officials have taken the position that the existing guidelines on interest restriction still stands, and the decision in the above case is not to be used as precedence for other similar cases which would have to be considered individually.

   Since the decision in Perna Securities is on point of principle and other disputes revolving around the same principle should be resolved on the basis of that decision.

   IRB confirmed that this case is not to be used as precedence for interest restriction for other companies. The existing guidelines is still to be used.

Capital Allowance claim on assets "owned"
DGIR v. Teo Tuan Kwee (199[illegible] MSTC 3,648

In the above case, both the Special Commissioners and High Court decided in favour of the taxpayer that beneficial ownership is sufficient to qualify for capital allowances under Schedule 3 of the Income Tax Act, 1967. However there have been indications that the IRB's position is still to reject capital allowance claims based on beneficial ownership and to allow claims based on legal ownership only.

IRB confirmed that beneficial ownership is sufficient to qualify for capital allowances. It was advised that the instruction of this issue was sent out on 24 March 1998 to all branches.

PENALTY FOR LATE SUBMISSION

It is appreciated that the IRB has always been flexible in applying the provision for imposing the maximum penalty of times the tax payable. It is also understood that assessors in the IRB are given instructions that provide a guide for determining the amount of penalty to be imposed in different cases.

In the context of the IRB's objective to promote better compliance with tax regulations by the tax-paying public, it is suggested that the rates of penalty to be imposed in different situations be made known to the public, so as to reduce uncertainties with regard to the cost of non-compliance by taxpayers.

IRB informed that they will not be able to disclose the rates of penalties to be imposed for different offences as the rates are for internal circulation only. However the maximum penalty is stipulated in the Act and it would be applied unless the DG wishes to exercise his discretion, on a case to case basis.

INSTITUTIONS APPROVED UNDER SECTION 44(6)

Please confirm that donations received by institutions and organizations approved under section 44(6) do not constitute "income" (as they are receipts in the nature of gifts.)

Approvals under section 44(6) usually incorporate the condition that "70% of income and donations" must be applied in carrying out the objectives of the institution/ organization. Under paragraph 13 of Schedule 6, an approval is also subject to the condition that 70% of income must be applied for charitable purposes. In applying this rule, income does not include donations.

Invariably all charitable institutions usually also have section 44(6) approval. There appears to be a conflict in the "70% rule" under the two approvals. It is suggested that there should be a standard condition for both, i.e. 70% of income only.

IRB explained that although donation is not income, nonetheless the DG has the discretion to grant only approval for section 44(6) status if 70% of income and donation is expensed for that year of assessment.

INVESTMENT ALLOWANCE

The following are some queries/ comments on the Guidelines on Investment Allowance and application forms recently issued by the Department.

1. **Guidelines**

a) "During the 5 year period that the company is eligible for RA, for each of the qualifying project undertaken, the company has to show an increase in productivity"

Comment

Per point 3.1 (page 5) it is stated that from the year of assessment 1998 onwards, RA is to be claimed on a company basis and not on a qualifying project basis. There seems to be a conflict with the above point which states that the company has to shown an increase in productivity for each qualifying project undertaken.

It is confirmed that the RA is given for 'each' company rather than 'each project'. As such, the increase in productivity must also be made in reference to the company.

b) Point 3, page 5 "Five consecutive years of assessment"

Comments

- **What is the rationale for the 5 year period?**
  Companies will have expansion/ diversification/ modernization over a longer period of time. Thus it is not logical to limit RA to a 5-year period. Also, because of the economic downturn, it is anticipated that many companies will not show an increase in PER in YA 98 and the next few years of assessment. Thus imposing a 5-year time limit at this time may not be giving full effect to the spirit of granting the incentive.

- The 5-year period commences from the year of assessment for the basis period in which the capital expenditure was first incurred while RA is only granted for those years of assessment in which the company meets the PE requirements. (Example 5) In other words, the 5-year limit commences from the YA for which the company is first eligible to make (or has made) a claim for RA, regardless of whether RA is granted or not.

  We are of the view that ideally, the 5-year period should commence from the year of assessment for which the RA is first granted by IRB.

  It was advised that this is merely a policy decision and the incentive is only meant to be given to a company that is finding its footings. Further, IRB informed that the period of 5 years commences in the year when the RA is granted.

c) Extension of time for submitting RA form

We are of the view that extension of time to submit the application form for RA for the YA 1998 should be granted for the following reasons:-

- The guidelines and application forms were issued only in the middle of April and there are points that still need to be clarified.
- Auditors need time to verify the information given and sign the report. This is because the report requires the auditors to certify, amongst other matters, that
  - the application "is in

accordance with schedule 7A of the ITA 1967"

and

- "...the expenditure claimed is true" (underlined for emphasis)

It is suggested that:

- The claim for RA be made in the Form C and in the tax computation, while the application form can be submitted later. Extension of time requested for is 3 months after the deadline for submission of the return.
- That the Auditor's certification be the same as the one in the old application form.

Extension of time will be granted based on the merit of each case.

Auditors Certificate

This will be reviewed but the existing guideline will still prevail.

d) Disposal of asset within 2 years

Example

Company A claims RA in YA 1998. Due to restructuring in the group, assets (on which RA has been claimed in YA98 by Co. A) are transferred to Co. B in YA99

Questions

- Will Co. B be able to claim RA in YA 99?
- Confirm that RA which was granted to Co. A in YA98 will not be withdrawn by virtue of paragraph 2A, Schedule 7A

Disposal must be interpreted strictly, even though the transfer of the asset is for restructuring purposes, nonetheless the DG would be drawn the RA claim if the transfer is within 2 years.

e. Definition of automation

The word "automation" is not defined in the legislation or the guidelines. It is noted that page 3 of the application form places automation in the same category as modernization. Can it be inferred that automation is modernization? (In the absence of a definition, can automation be deemed as modernization?)

Should be given a dictionary meaning.

2. **Application form**

a) **Part B, page 3 - Particulars of project**

Date of completion - this is not relevant in respect of qualifying projects as most of them are on-going.

It may only be relevant in respect of buildings. However, this information is already furnished on pages 5 and 6 of the Form. Therefore, refere can be made to those pages

b) **Part D, page 5 - Claim expenditure**

Part D.1 - Particulars expenses on assets where was claimed in the preced year of assessment

- What is the relevance this part other than furnish informati required in respect of assets?
- Please clarify whether t part needs to completed in claim for YA2000 in the follow scenario:
  YA 98 - claimed RA
  YA 99 - RA not claimed
  YA 2000 - claimed RA claim in "preceding" YA

Part D2

The column "Function" is relevant. We understand t the purpose of this column to insure that only R is claim on assets which are used for business. For example a bisc manufacturer should not claiming RA on machine wh is used to cut steel.

This column is not relevant the Declaration (Part E) by t applicant is adequate.

Application form should filled up accordingly. A members having difficulty attend the workshop bei organized on this issue.

QUOTATION

A good Manager is always profiting more from the people below him than from himself. He recognises that his source of power within the organisation ultimately comes from his subordinates.

By **Richard Welch**

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 22 May, 1998.

Jabatan Kastam Dan Eksais Di Raja Malaysia

MINIT MESYUARAT

PANEL PERUNDINGAN KASTAM/SWASTA 1/98

RKARA-PERKARA BERBANGK1T

rkara 1:
es Tax Exemption on raw materials, components and ckaging materials for non taxable finished goods.

tisari Perbincangan

present, local manufacturers of non-taxable goods are not ible to purchase or import raw materials, components or kaging materials free from sales tax under Section 9 & 10 The Sales Tax Act 1972. According to Schedule C of the Sales (Exemption) Order 1980, exemption will be given to able raw materials and components (including packing erials) for use in the manufacture of exempted goods for ort. Unfortunately, in the case of sales to domestic market, exemption will be given. However, importation of the same shed product are exempted from the import duty and sales As such, local manufacturers are facing intense price petition from local importers of the same products. Such umstances can be considered as creating an unfair petition for those manufacturing the products locally as production costs will increase significantly and these itional cost will eventually be passed on to the consumers e form of a higher selling price. Hence, this has resulted ocally manufactured goods losing the competitive edge the same imported goods, which would be definitely be per.

e there is no facility provided under the Sales Tax Act 1972 ch allows the purchase of raw materials, components and kaging materials free from sales tax for the manufacture n taxable goods, the local manufacturers are placed in a disadvantageous situation, making their finished goods competitive. It is felt that the implication of this matter discourage local manufacturing of these products and is not in line with the Government's policy to support local facturing and promote Malaysian manufactured goods.

ew of the above, FMM had requested the Treasury to into the policy decision to adopt the single stage tax pt during the FMM - Customs Advisory Committee g held on July 29, 1997 which was also attended by oms Officials. A letter had been written to the Treasury to follow up on this matter as FMM felt that the single stage concept should only apply to taxable goods as when the tax was first introduced. To date, FMM did not receive any reply from Treasury on the matter. In this regard, FMM would like to request the Customs to review the present sales tax exemption for the local manufactured non-taxable goods in older to encourage and boost Malaysian manufacturing industry.

Keputusan

Perbendaharaan telah membuat keputusan iaitu tidak mengubah kaedah pengenaan cukai jualan masakini. Hanya pekeliling terpilih sebagaimana Jadual C, Perintah Cukai Jualan (Pengecualian) 1980 sahaja dapat menikmati bahan mentah, komponen dan pembungkusan bebas cukai jualan. Permohonan ini telah dikemukakan kepada Perbendaharaan dan masih dalam pertimbangan pihak berkenaan.

Tindakan :
Bahagian Cukai Dalaman

Perkara 2 :
Constraint faced by LMW and FZ Companies due to the amendments made in the Budget 1997 and Budget 1998.

Intisari Perbincangan

Arising from Budget 1997, manufacturers of taxable goods located in the Licensed Manufacturing Warehouse (LMW) are no longer required to be licensed under the Sales Tax Act 1972. As such, LMW companies lose their advantage of sales tax exemption when purchasing raw materials through third party and when subcontracting is done. There is an increase in the total sales tax value to be paid. In addition, amendment in the Sales Tax Act 1972 also requires sales tax on finished goods to be valued based on the full import duty 'payable' on the finished goods even though the actual import duty 'paid' on raw materials is at a lower rate. Effectively, higher amount of sales tax is being paid and the increased cost will ultimately be passed on to the consumers in the form of a higher selling price. As the Budget 1998 did not address this matter, the LMW manufacturers have raised their concern on the constraints currently faced by them.

In addition, FMM would also like to bring to attention the announcement made in the Budget 1998 on the taxation policy on local sales by LMW and FZ companies. According to the Budget, full import duty would be imposed on manufactured goods used directly by consumers. As such, LMW and FZ companies are no longer eligible to pay import duty on raw materials (input stage). Under such circumstances, manufacturers would have to pay a higher rate of import duty and the additional costs incurred on finished goods would eventually be passed on to the consumers. Hence, the LMW and FZ companies are placed in a very disadvantageous situation and this would affect the growth of these companies. In view of this, FMM would strongly urge the Customs Department to come out with clear guidelines and procedures to overcome the shortcomings caused by the amendments in both Budget 1997 and Budget 1998.

Keputusan

Seperti yang diperjelaskan di dalam mesyuarat yang lalu, isu ini telah dikaji semula oleh Perbendaharaan dan berikutan daripada itu, keputusan-keputusan baru telah dibuat seperti berikut:

KEPUTUSAN MUTAKHIR BERKAITAN PENJUALAN TEMPATAN DARI LMW/ZPB.

JENIS BARANG	DUTI DIKENAKAN
i. Barang pengguna dan barang perantaraan yang ada dikeluarkan di KUK	Duti import bersamaan kadar CEPT
ii. Barang pengguna dan barang perantaraan yang ada dikeluarkan di KUK:	
a) Mengandungi bahan tempatan melebihi 51%,	Duti Import 5%
b) Mengandungi bahan tempatan 40% hingga 51%	Mengikut merit sesuatu kes
iii. Barangan pengguna yang tiada dikeluarkan di KUK	Duti Import 3%
iv. Barangan perantaraan yang tiada dikeluarkon di KUK	Duti Import 0% atau 3% mengikut kadar terpakai semasa bagi pengecualian duti import

Untuk Makluman

Perkara 3 :
Memohon pihak Jabatan menimbangkan penyertaan bumiputera daripada 51% di semua kategori kepada 30% sejajar dengan peruntukan Bumiputra sebanyak 30% bagi Ejen Perkapalan.

Intisari Perbincangan

Buat masa ini semua ejen penghantaran yang diluluskan di bawah Seksyen 90 Akta Kastam 1967 diwajibkan mempunyai 51% penyertaan bumiputera di semua aspek seperti ekuiti peringkat pengarah, pengurusan, eksekutif, penyelia serta kakitangan.

Buat masa ini industri fret menghadapi masalah memperoleh kakitangan bumiputera di peringkat pengurusan eksekutif serta peringkat penyelia. Sebagai memenuhi syarat kebanyakan daripada ejen-ejen yang terlibat akan melantik pekerja bumiputera yang tidak mempunyai pengalaman yang luas dan mengakibatkan beberapa kelemahan yang ketara. Perkara tersebut jika berlanjutan akan mempamerkan kemerosotan di dalam kualiti kerja di peringkat tersebut dan akan merugikan kedua-dua pihak iaitu ejen dan juga jabatan. Jika dipersetujui, pihak FMFF bersedia membincangkan secara mendalam mekanisma yang akan digunakan bagi mengelakkan sebarang salahguna.

Keputusan

Cadangan menimbangkan penyertaan bumiputera daripada 51% di semua kategori kepada 30% telah dikemukakan kepada Perbendaharaan untuk dikaji semula dan masih dalam kajian Perbendaharaan.

Tindakan
Bahagian Kastam

Perkara 4 :
Memohon jasa baik Jabatan menasihati ejen-ejen yang telah dibenarkan beroperasi di bawah Seksyen 90 Akta Kastam 1967 menganggotai mana-mana Pertubuhan yang bersesuaian atau menjadi Ahli Bersekutu FMFF.

Intisari Perbincangan

Buat masa ini lebih 60% daripada ejen-ejen yang terlibat menjadi ahli bersekutu FMFF. Yang lebihnya masih tidak mahu menjadi ahli dan ini amatlah menyukarkan pihak FMFF untuk menghasilkan tahap perkhidmatan yang standard. Mereka yang bukan ahli tidak dapat terlibat secara aktif di dalam semua aspek program yang dianjurkan oleh FMFF atau pihak Persatuan yang lain seperti program latihan dengan AKMA, General Freight Forwarding Certificate serta Diploma level program HRDC dan yang terkini ada program latihan melalui Majlis Latihan Vokasional Kebangsaan (MLVK) di bawah Kementerian Sumber Manusia.

Keputusan

Satu arahan telah dikeluarkan kepada semua Pengarah

…am Negeri untuk memberi perhatian ke atas perkara yang …but.

Untuk Makluman

…kara 5 :
…ndard Customs Operating Procedures.

…isari Perbincangan

…present, the Customs Department have displayed a Client …rter informing and assuring members of the public that … Department is committed in giving quality service to users. … would like to request that your Department takes this …nt Charter a step further by incorporating a Standard …erating Procedures (SOP) for the entire Customs process …w with time frame given for each stage of the flow process. …sently, the Road Transport Department have such a SOP …d incorporating a time frame, the customs process flow will … more transparent and there will be more accountability. …sently, it is very common for some forwarding agent/users …dopting to the easy way out and avoid accountability by …ting the blame on the Customs whenever there is a delay …en confronted by their clients but with such a SOP, there … be less finger-pointing and more accountability among … various parties.

…putusan

…atan telah bersetuju dengan usul memasukkan ketepatan …sa bagi keseluruhan carta aliran kerja Jabatan untuk …menuhi kehendak "Standard Operating Procedures …O.P)." Ekoran daripada usul tersebut, Jabatan telah …gambil tindakan dengan mengeluarkan arahan kepada …p Bahagian/Cawangan Ibu Pejabat dan juga ke semua …geri-negeri.

Untuk Makluman

…kara 6 :
…rwarding Agents-Payment of Customs Duties/Taxes using …k Draft/Cheques/Bank Guarantee.

…isari Perbincangan

…ently forwarding agents are being approved under Section … the Customs Act 1967. Under the present scenario, …arding agents are paying customs duties and taxes either …sing bank draft, cheque or via electronic fund transfer … Port Klang and Subang Airport only).

… Bank Draft
… Payable either by importer direct to Customs Department … by Forwarding Agents if they exceed the maximum … daily amount payable by Forwarding Agents cheques. … Both parties will incur only bank charges.

b) Payable by Cheques
Only Forwarding Agents and Importers who has a deposit through bank guarantee with the Customs Department can pay by cheque with a certain amount limit per day transactions. Under the present practice, Forwarding Agents/Importers are required to deposit with Customs Department 3 times the allowed amount per day transactions or local cheques and six times the allowed amount per day for outstation cheques payment.

Keputusan Perbincangan.

Perkara ini telah dipertimbangkan dan isu telah dianggap selesai.

Untuk Makluman

Perkara 7 :
Section 90 of The Customs Act, 1 967 gives provision for any person to apply to the Director General Of Customs to operate as a customs agent. Administratively, the extent of the operation would only be at the customs station where the application was approved. However, one may apply to have the operation extended to other states.

Intisari Perbincangan

Section 90 gives the Director General the power to allow any person to operate as a Customs Agent. The fact that the approval was by the Director General should be enough to encompass the approval to any state/place in Malaysia. It would seem odd that the main approval being granted by the Director General would require an approval of the State Director in the case where the approval should be sufficient/ required to enable any approved person to operate in any place, besides this will necessarily cut down on administrative cost both to the Customs as well as the Operators.

Keputusan

Jabatan telah membuat pindaan kepada Perintah Tetap Kastam berkenaan prosedur kelulusan ejen penghantaran di mana kelulusan untuk menjadi wakil penghantaran oleh Pengarah Kastam Negeri di sesuatu negeri adalah merangkumi cawangan syarikat di negeri lain.

Sekiranya di dalam permohonan pertama syarikat telah menyatakan hasrat untuk membuka cawangan di lain-lain negeri, satu salinan kelulusan akan dipanjangkan ke Pengarah Kastam Negeri berkenaan.

Sekiranya syarikat berhasrat menubuhkan cawangan selepas kelulusan, permohonan boleh dibuat dengan menulis surat kepada Pengarah Kastam Negeri yang meluluskan permohonan asal dan disalinkan kepada Pengarah Kastam Negeri cawangan ia beroperasi. Salinan kelulusan akan dikemukakan kepada Pengarah Kastam Negeri di cawangan berkenaan.

Untuk Makluman

Perkara 8 :
Item 91 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 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, CJ5A and CJ5B facilities.

Intisari Perbincangan

Following the amendments, sales made to a LMW would therefore be an export sale. Consequently, traders are eligible to use item 91 for sales to be made to LMW'S. The sales tax authority, however, does not allow the use of item 91 for such sales to LMW'S. Citing administrative inadequacies (if there is no K2, the export declaration form to prove that export has taken place), it must be emphasized that the Customs Act, 1967 do not treat LMW'S as being outside the country, hence the question of export does not arise.

This position by the Sales Tax Authority has placed traders in a dilemma, since they will not be able to acquire goods tax free for supply to LMW nor will they be able to claim a drawback on sales tax paid goods.

Keputusan

Cadangan FMM untuk menggunakan butiran 91, Jadual B, Perintah Cukai Jualan (Pengecualian) 1980 telah dikaji oleh Cawangan ini dan didapati ianya tidak sesuai dan akan menimbulkan masaalah percanggahan dengan peruntukkan dan kelayakan ienis barangan yang boleh dibekalkan oleh "trading company" kepada syarikat LMW. Untuk memenuhi keperluan perniagaan dan memberikan kemudahan yang sama dengan kemudahan C.J.5A, Cawangan ini telah mencadangkan tambahan peruntukkan dalam Jadual B, Perintah Cukai Jualan (Pengecualian) 1980 ke Perbendaharaan pada 31 Disember 1997 dan masih di dalam pertimbangan.

Tindakan:
Cawangan Cukai Jualan

PERKARA-PERKARA YANG DIBINCANGKAN

(ISU-ISU YANG DIUSULKAN DARIPADA FMM)

1. **Payment of Sales Tax on Local Sales by LMW/FIZ Companies**

   FMM welcomes the Ministry Of Finance's decision to review the taxation policy on local sales made by LMW/FIZ companies as announced in Budget 1998 whereby companies in LMW/FIZ are given the option to pay import duty based on CEPT rates or other specific ra... according to their qualifications. However, the sales ... to be paid for local sales by LMW/FIZ companies wo... be based on the full import duty 'payable' although ... actual import duty 'paid' is at a lower rate. Su... circumstances have placed LMW/FIZ at ... disadvantageous situation as the same product impor... from ASEAN countries would enjoy the CEPT rates ... terms of payment of import duty and sales tax. As su... the current taxation policy for sales tax would create ... unfair competition for LMW/FIZ manufacturers ... products imported From ASEAN countries wou... definitely be cheaper. It is also felt that since compan... in LMW/FIZ had been permitted to pay import du... based on CEPT or other specific rates, the sales tax to ... paid should be based on these rates.

   As LMW/FIZ companies are export-oriented an... contribute significantly to the country's economy, it is ... that the sales tax treatment imposed does not encour... the growth of these companies. With the current econo... downturn, it is felt that the cost of doing business sho... not be increased and products manufactured by LM... FIZ companies should be accorded the similar or be... treatment as received by products imported from ASE... countries.

   In view of this, FMM would like to request Customs ... re-look and review the current taxation policy on sa... tax imposed on LMW/FIZ companies as it would af... the competitiveness of these companies in our o... market.

   Keputusan:

   Keadah untuk mengutip cukai jualan seperti ditetap... di bawah seksyen 7 Akta Cukai Jualan oleh orang k... cukai dan barang-barang yang diimport adalah je... Elemen duti kastam adalah terdiri dari yang sebe... dibayar (paid) atau yang kena dibayar (payable) mengi... mana berkenaan. Jualan tempatan GPB dan ZPB deng... mengambilkira duti kastam kena dibayar te... dikemukakan kepada Perbendaharaan. Mesyua... dengan Perbendaharaan akan diadakan un... membincangkan isu ini dan sebagai satu alterna... pengecualian di bawah seksyen 10 sedang dib... pertimbangan sewajarnya sebagaimana yang dib... kepada duti kastam di bawah seksyen 14(2). Jaba... memang menyokong supaya GPB dan ZPB diberi laya... yang sama dengan barang-barang yang berasal d... negara-negara ASEAN. Jabatan berpendapat adalah le... praktikal pihak FMM memohon pengecualian di ba... seksyen 10 kepada YAB. Menteri Kewangan daripa... mempersoalkan kaedah mengenakan cukai jualan.

   Untuk Maklum...

tem 91 of the Sales Tax (Exemption) Order 1980

Arising from Budget 1997, LMW is treated as an area ocated outside Malaysia and as such, sales from PCA to LMW should be considered as export sales. However, at present, the Sales Tax Authority does not allow the use of Item 91 of the Sales Tax (Exemption) Order 1980 for sales made 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.

During the lost Consultative Panel Meeting held in November 1997, the Committee was informed that Customs would accept any other commercial document as proof of sales to LMW. Further to this, an official letter was sent to Customs in December 1997. However, to date, FMM have not received any reply from Customs. In this regard, FMM would like the Customs Deportment to brief the Committee on the progress of this matter.

Keputusan:

Butiran 91 mengecualikan cukai jualan kepada "any person" membeli dari pemegang lesen semua barang yang dikilang untuk dieksport. GPB hanya layak mendapat pengecualian keatas barang yang digunakan secara lansung untuk mengilang sesuata barang sebagaimana Butiran 28. Berdasarkan pertimbangan ini Butiran 91 tidak sesuai diguna pakai dalam hal ini. Cadangan mewujudkan Butiran baru dalam Perintah Cukai Jualan (Pengecualian) 1980 telah dikemukakan untuk pertimbangan dan kelulusan Perbendaharaan.

Tindakan :
Bahagian Cukai Dalaman

Licensing Requirements under the Sales Tax Act 1972

At present, manufacturers of taxable goods whose sales turnover of taxable goods for the preceding 12 months does not exceed RM100,000 are exempted from the requirement of licensing. As such, companies which started their business on a small scale with annual sale value less than RM100,000 are not required to be licensed under the Sales Tax Act. However, they are required to apply for a certificate of exemption (CJ6). As these small scale businesses expand and their sale value increase (exceeding RM100,000), they still remained unlicensed For obvious reasons. As many of these companies are located in rural areas, their expansion or business activities may not be brought to the attention of Customs and only companies in the same industry (their competitors) would be well-informed about their business projects and activities. The problem arises when all these companies (licensed and unlicensed under Sales Tax Act) in the same industry bid for the same project and companies which started their business with annual sale value exceeding RM100,000 and licensed under the Sales Tax Act would lose out to their competitors that are not licensed under the Act due to the higher price imposed (taking into account the 10% sales tax to be paid by customers).

As this constraint is creating an unfair competition among licensed and unlicensed companies, FMM would like to request Customs to impose a more stringent checking or examination on companies before the certificate of exemption is issued.

Keputusan:

Jabatan bersetuju mengambil tindakan seperti yang dicadangkan. Jabatan juga meminta kerjasama pihak swasta untuk memberi maklumat kepada Jabatan berkaitan dengan penyelewengan yang telah dilakukan bukan sahaja oleh pelesen Cukai Jualan tetapi juga oleh pemegang SPL.

Untuk Makluman

4. Implementation of Service Tax as proposed under Budget 1998

Arising from Budget 1998, the scope of service tax was expanded to include management services with effect from January 1, 1998. As the types and scope of management services are not limited, all services rendered by companies within the same group would be considered service taxable. It is felt that the implementation is not in line with the Government's call for Malaysian companies to merge or integrate in the effort to better respond and overcome the current financial crisis. As the manufacturers are among the affected private sectors, it had become important for them to reduce the costs of doing business while increasing their productivity. Every effort is also being taken to ensure the utilisation of manpower as a way to overcome the present crisis. As such, many companies have come together and try working out ways to utilise their manpower in the various areas of the company i.e. human resource management, internal audit, financial management, etc. However, it is sad to note that while continuous efforts are taken by the private sectors, these efforts are not supported by the Government as service tax is imposed or charged on every separate entity nor withstanding the fact that these separate entities are operating under the same group. As such, all the entities in the same group of company would be incurring the tax.

FMM strongly feels that with the current downturn in Malaysia's economy, the Government should restore the confidence of manufacturers instead of burdening them with extra taxes. In addition, the broad definition of 'management services' is totally contrary to Customs' aim to be more transparent and clear to the private sectors. In

this regard, FMM would strongly urge Customs to look into the changes introduced in terms of service tax as announced in Budget 1998 to ensure the transparency and appropriateness of the inclusion of management services as a service taxable item.

Keputusan:

Isu yang ditimbulkan ialah :-

1. "Service Tax levied on Intra-Company Management would impose additional cost as against efficiency"
2. "This will not be in line with Government desire to see Malaysian Companies operate more efficiently and be more competitive particularly in global market".

Syarikat-syarikat dalam rangkaian 'Group Companies, Forwarding, Corporate' merupakan kumpulan yang mempunyai entiti yang berasingan. Ini bermakna ia didaftarkan dengan ROC secara berasingan.

Manakala di bawah peruntukan yang sedia ada di bawah Akta Cukai Jualan dan Cukai Perkhidmatan, perkhidmatan yang ditetapkan yang disediakan oleh mana-mana firma atau syarikat kepada firma atau syarikat lain yang mempunyai entiti yang berasingan adalah tertakluk kepada Cukai Perkhidmatan. Keadaan yang sama juga dipakai bagi perkhidmatan-perkhidmatan yang disediakan oleh anak-anak syarikat di bawah 'group companies' yang lain dalam satu kumpulan syarikat yang sama. Ini bermakna, walaupun di bawah satu 'group of companies', syarikat-syarikat itu berasingan daripada segi entitinya dan syarikat-syarikat yang membuat perkhidmatan kepada anak syarikat dalam kumpulan yang sama akan buat tuntutan setiap tahun kepada syarikat yang diberi perkhidmatan. Ini bermakna di dalam peruntukan perundangan sedia ada, syarikat yang memberi perkhidmatan perlu membayar cukai perkhidmatan.

Walaupun syarikat itu berada di dalam satu kumpulan, tetapi mereka berbeza dari segi entiti. Masalah itu telahpun dikemukakan sebelum Jabatan mengambil langkah untuk merangkumkan perkhidmatan khidmat perunding sebagai perkhidmatan yang dikenakan cukai perkhidmatan. Sebagai contoh, apabila sebuah anak syarikat memberikan perkhidmatan khidmat perunding kepada anak syarikat yang lain walaupun berada di dalam satu kumpulan, perkhidmatan khidmat runding ini dikenakan cukai perkhidmatan. Walaupun ini bermakna pengurangan dari segi kos perbelanjaan serta kos-kos lain tetapi pada akhir tahun kos pengurusan tetap wujud. jadi masalahnya sekarang, undang-undang itu memang menentukan cukai perkhidmatan perlu dikenakan daripada satu entiti kepada satu entiti yang lain.

Pihak Jabatan juga telah menerima pertanyaan yang sama daripada MICCI dan definisi telah diberikan dan penerangan tentang jenis-jenis 'management' yang dikenakan cukai.

Jabatan telah menetapkan bahawa jenis dan skopnya adalah seperti berikut:

- Corporate Affairs Management
- Human Resource Management
- Management Information System
- Sales & Marketing Management
- Productivity & Quality Management
- Administrative & Secretarial Services
- Property Management
- Asset Management
  (excluding buying and selling of shares, bonds, warrants, etc. and management of savings, unit trusts
- Project Management

Di dalam konteks untuk penjelasan lanjut pihak swasta adalah diminta untuk menulis terus kepada Jabatan. Maklumat serta penerangan lanjut boleh didapati melalui 'Homepage' Jabatan dan beberapa sesi dialog yang akan diadakan. Jabatan juga telah mengadakan sesi dialog dengan YAB Menteri Kewangan untuk penjelasan berkenaan hal tersebut.

Untuk Maklumat

(ISU-ISU YANG DIUSULKAN OLEH MICCI)

5. Export Of Containerised Cargoes And East Malaysia Conventional Shipment At Port Klang

For export of containerised cargoes and East Malaysia conventional shipments, Customs Declaration Forms are submitted at the Customs Complex at Port Klang. The Customs Officers in the Complex, upon checking the Declaration Forms, would then give permission for the cargoes to be loaded into the vessels. During the process of checking the Declaration forms, 3 or 4 Customs Officers are involved in registering the forms, checking tariff codes, checking invoice numbers, cost, product, vessel identification, etc. prior to approving the forms.

The rate of releasing these Declaration Forms can be undertaken either speedily or very slowly. The delay is caused by the Customs Officers raising many queries requiring cargo examination, playing up minor and inconsequential errors and thereby delaying deliberately. These then cause Customs to hold the cargoes, and the effected cargoes are then delayed or may not be shipped out.

The Customs Officer's speed of processing and releasing the Export Declaration Forms and the will to detect minor errors in the forms and the delay and/or holding up of containers from being shipped, will depend on the financial inducements given to the Customs Officers involved. This is a perennial problem.

Suggested Solution:

a) Installation of an on-line service linking Peninsular Malaysia with East Malaysia to minimise the usage of forms.
b) Simplify the Customs Declaration Forms for export cargoes in containers so that it is less error-prone.
c) Customs Officers should give in writing the specific reasons for the delay in clearance to the person submitting the Form. This should be subjected to spot vetting both by Senior Customs Officers and officers of the Anti Corruption Agency.

Keputusan:

a) Jabatan sememangnya mempunyai perancangan untuk memperluaskan SMK ke seluruh negara. Walaubagaimanapun sehingga perlaksanaan SMK diperluaskan ke Sabah dan Sarawak, penghantaran CUSDEC Borang Kastam 3 secara elektronik tidak dapat dilaksanakan.
b) Di dalam belanjawan 1998, Jabatan telah membenarkan barang-barang di eksport dahulu dan borang ikrar kastam dikemukakan dalam tempoh 7 hari selepas eksport. Pengeksport hanya perlu mengemukakan dokumen perdagangan seperti inbois dan nota perkapalan bagi menggantikon borang ikrar eksport. Di antara tujuan jabatan mengadakan peruntukan yang baru ini adalah untuk mengatasi kelewatan memproses borang ikrar sebelum eksport. Semakan yang terperinci ke atas borang ikrar akan dibuat selepas eksport selesai. Dengan prosedur yang baru ini isu mempermudahkan borang kastam tidak timbul lagi.
c) Jabatan telahpun mewujudkan Jawatankuasa Kuutuhan Pengurusan Jabatan Kastam Dan Eksais Diraja di peringkat Ibu Pejabat dan di peringkat stesen. Tata kelakuan serta disiplin pegawai adalah di bawah bidangkuasa jawatankuasa ini. Oleh yang demikian, pihak swasta adalah diminta melaporkan secara bertulis insiden-insiden di mana pegawai sengaja atau merancang kelewatan pelepasan borang.

Datuk Pengerusi menyeru agen-agen penghantaran supaya tampil ke hadapan dan memberi laparan secara bertulis kerana Jabatan memandang berat perkara tersebut. Jabatan juga tidak mahu pegawai-pegawai seperti yang didakwa wujud dalam jabatan.

Ekoran daripada saranan Datuk Pengerusi, wakil daripada MICCI akan berbincang dengan ahli-ahlinya berkenaan perkara tersebut. Wakil tersebut juga berpendapat satu mekanisma perlu dibentuk bagi menjelaskan kemudahan-kemudahan yang telah disediakan bagi mempermudahkan prosedur eksport.

Tindakan : MICCI

6. Customs Uplift.

The Customs on many occasions had uplifted 10-15% CIF price on some imported products, and no-reasons were given for the imposition of uplift.

Suggestions:

Customs should inform the importers on why and how the uplift were ascertained. Alternatively, we would appreciate the early implementation of WTO Customs Valuation Code so that there will be more transparency in the imposition of the uplift.

Keputusan:

Penaikan 10%-15% yang dikenakan oleh pegawai penaksir adalah sebagai penaikan sementara bilamana difikirkan syarikat berkenaan telah mengambil alih agensi baru. Pengimport diberi peluang membayar duti secara bantahan mengikut Seksyen 138 Akta Kastam. Pihak Ibu Pejabat akan mengambil tindakan untuk memberi penjelasan secara lisan atau bertulis kepada pengimport tentang sebab-sebab dan cara penaikan dicapai. Untuk makluman pihak swasta, Jabatan akan melaksanakan penilaian WTO pada 1hb. Januari 2000 mengikut Perjanjian WTO dan juga komitmen baru negara-negara ASEAN.

Untuk Makluman

(ISU-ISU YANG DIUSULKAN OLEH INSTITUT PERCUKAIAN MALAYSIA)

7. Service Tax On Intra-Company Management Services

If service tax is to be levied on such intra-company management services, it would impose an additional cost to companies doing business in Malaysia when they do not really derive any income as they in effect service themselves. There is therefore anomaly since companies organised to service themselves through divisions of one company do not suffer the tax. Thus it penalises corporate groups which organise themselves in this way to achieve efficiency. This will not be in line with the Government's desire to see Malaysian companies operate more efficiently and be more competitive particularly in the global markets.

Suggestions:

As the imposition of service tax on intra -company group management fees is counter productive, and in this context, inconsistent with the concept of a consumption tax perse, the Chamber would urge that the policy to impose the tax on subsidiary companies with a group of companies be reviewed. The term 'subsidiary' may be defined to accord the same meaning as that found in the

Companies Act 1965. (The issue had been submitted to MOF for consideration).

Keputusan:

Usul ini telah dibincangkan di peringkat awal mesyuarat panel dan berkaitan dengan usul yang di bawa oleh FMM di usul ke 4.

Untuk Makluman

10. Sales Tax Issues

In the 1997 Budget, a new section 2B was inserted to deem a Licensed Warehouse and a Licensed Manufacturing Warehouse (LMW) as a place outside Malaysia. Two issues have arisen out of this amendment.

Before this amendment, a LMW which manufactures goods subject to sales tax is required to be licensed under the Sales Tax Act, 1972 (STA 1972). In such case, the LMW may apply to the Sales Tax Authorities For CJ5 facility (to acquire tax-free raw material). Correspondingly, a trader who supplies the raw material to this LMW can obtain the CJ5A facility from the relevant sales tax authorities to import/purchase raw material from a licensed manufacturer free of sales tax for supply to a LMW.

After the amendment, a LMW is no longer required to be licensed under the STA, 1972 and therefore is not eligible For CJ5 facility. In this case, the CJ5A facility available to a trader is also no longer applicable.

Proposed Solution

As a LMW is deemed to be outside Malaysia, movement of goods from the Principal Customs Area (PCA) to a LMW should accordingly be deemed export. There is no definition for the term 'export' in the STA, 1972 eventhough that word is mentioned. In this case then, the general meaning, as in the Interpretation Act 1967, should be given cognizance. Following this, the exemption under Item 91, Schedule B of Sales Tax (Exemption) Order 1980 is applicable in the case of a trader who purchases taxable raw material from a licensed manufacturer for supply to LMW.

(Presently, the sales tax authorities disallow the use of Item 91 for the above arrangement on the ground that there is no Customs No. 2 to substantiate export.)

A case of dual treatment is also eminent since a drawback under Section 29 STA, 1972 is allowed for tax-paid goods delivered to a LMW.

Keputusan

Jawapan kepada usul ini adalah berkaitan dengan penjelasan bagi usul ke 2 yang dibangkitkan oleh pih FMM.

Untuk Maklum

11. Sales Tax Issue.

Before the amendment, Item 104 provides for exempti of sales tax on goods partially manufactured in a LM which is sent to a manufacturer in PCA for furth manufacture under a subcontracting arrangement. In t case, the conditions of exemption, amongst others, requ that the LMW be licensed under the STA, 1972 where the said manufacturer in PCA is not licensed under ST 1972.

As a LMW is not licensed under STA, 1972 after 25 Octob 1996, Item 104 cannot be utilized.

Proposed Solution

It is proposed that the Sales Tax (Exemption) Order 19 be amended by deleting condition (iii) of Item 104. Th will allow the LMW to have a sub-contract arrangem with a manufacturer in PCA, irrespective of whether t PCA manufacturer is licensed under STA, 1972 otherwise.

Keputusan:

Butiran 104, Jadual B, Perintah Cukai Jual (Pengecualian) 1980 adalah berkaitan dengan LMW a sesiapa sahaja yang dilesenkan di bawah Seksyen 65/6 Akta Kastam 1967. Barang-barang yang dikecuali adalah 'all goods, packing materials used directly in manufacture of finished/semi-finished goods in premises of the manufacturers undertaking sub-contr work in the Principle Customs Area'.

Cadangan untuk membatalkan syarat (iii) Butiran 1 Jadual B, Perintah Cukai Jualan (Pengecualian) 1980 un membolehkan sub-kontrak oleh syarikat LMW kepa syarikat di Kawasan Utama Kastam telah dikaji d dipersetujui oleh Jabatan dan pihak Jabatan telahp mengemukakan cadangan tersebut ke pih Perbendaharaan pada 31 Disember, 1997. Cadangan belum diluluskan oleh Perbendaharaan.

Untuk mengatasi perkara tersebut sehingga cadan dapat diluluskan oleh Perbendaharaan, Datuk Penge telah mengarahkan Cukai Dalaman supaya meng bidang-bidang kuasa bagi membolehkan kelulu sementara diberi.

Tinda
Bahagian Cukai Dala

Service Tax issues.

In the 1998 Budget, the scope of service tax has been extended to include companies providing management services with annual turnover of taxable services exceeding RM300,000.00.

In this connection, the customs authorities have issued guidelines regarding the determination of threshold. The guidelines stipulates that management services rendered in 1997 shall be taken into consideration to determine the threshold.

Management services were prescribed to be taxable services effective from 1 January 1998. As such, management services were not taxable prior to January 1998. It follows that management services rendered in 1997 should not be included for purposes of determination of threshold.

Proposed Solution:

We are of the view that only management services provided on or after 1 January 1998 should be taken into consideration to determine the threshold for equal treatment under the provisions of the Service Tax Act, 1975.

Keputusan:

Penentuan "Threshold" Bagi Perkhidmatan Pengurusan

Perkhidmatan pengurusan menjadi perkhidmatan yang ditetapkan pada 1 Januari 1998. Oleh yang demikian, mulai 1 Januari 1998 orang yang menyediakan perkhidmatan yang ditetapkan ini tertakluk kepada Akta Cukai Perkhidmatan dan hendaklah memohon lesen apabila jualan perolehan tahunan bagi perkhidmatan ini mencapai threshold yang ditetapkan. Walaupun sebelum 1 Januari 1998 perkhidmatan pengurusan bukan perkhidmatan yang ditetapkan, akan tetapi pada 1 Januari 1998 syarikat/ orang yang berkenaan yang telah pun menyediakan perkhidmatan pengurusan yang sama, maka jualan perolehan tahunan bag 12 bulan kebelakang (1 Januari - 31 Disember 1997) hendaklah diambilkira bagi menentukan sama ada syarikat telah mencapai "threshold" dan perlu memohon lesen. Perlu ditegaskan bahawa sebelum 1 Januari 1998, perkhidmatan pengurusan bukan perkhidmatan yang ditetapkan, akan tetapi pada 1 Januari 1998 ia menjadi perkhidmatan yang ditetapkan dan mana-mana orang yang menyediakan perkhidmatan ini tertakluk kepada Akta Cukai Perkhidmatan 1975 apabila telah mencapai "threshold" pada Januari 1998.

Cara penentuan di atas telah diterima pakai sejak skop cukai perkhidmatan diperluaskan kepada penyedian perkhidmatan-perkhidmatan professional pada 1 Januari 1992. Pada ketika itu juga, untuk menentukan sama ada sesuatu syarikat/firma pemilik tunggal yang menyediakan perkhidmatan yang ditetapkan (mulai 1.1.92), jualan perolehan tahunan bagi 12 bulan sebelumnya (1.1.91- 31.1.91) telah diambil kira. Tempoh tersebut digunakan sebagai asas atau "base" untuk penentuan iaitu sama ada seseorang (person dalam Akta Cukai Perkhidmatan 1975) menjadi orang yang kena membayar cukai dan perlu dilesenkan. Jelasnya cukai perkhidmatan tidak dikutip sebelum 1 Januari 1998 bagi penyediaan perkhidmatan pengurusan yang hanya menjadi perkhidmatan yang kena dibayar cukai ("taxable service") mulai pada 1 Januari 1998.

Untuk Makluman

USUL DARIPADA JABATAN KASTAM

Perkara 1 :
Cadangan supaya pemegang lesen cukai jualan dan cukai perkhidmatan mengambil berat serta mematuhi kehendak akta dan peraturan berkaitan mengambil berat terhadap pelesenan berkenaan.

Cadangan

Bahagian Cukai Dalaman mengemukakan cadangan supaya pemohon lesen mengemukakan permohonan serta mengambil sendiri lesen yang dipohon dan tidak mewakilkannya kepada pihak lain. Surat pengakuan menerima lesen dan pengakuan memahami serta akan mematuhi kehendak Akta dan Peraturan berkaitan perlu ditandatangani di hadapan seorang pegawai kanan kastam.

Latarbelakang:

Masalah-masalah yang dikenalpasti selepas syarikat dilesenkan di bawah Akta Cukai Jualan 1972 dan Akta Cukai Perkhidmatan:-

1. Pemegang lesen gagal memahami dan memenuhi tanggungjawabnya atas lesen itu sendiri. Akibatnya:-
   - 1.1 Lesen tidak dipamerkan di tempat yang mudah dilihat dipremisnya.
   - 1.2 Gagal memohon dan mengemukakan salinan asal lesen untuk dipinda apabila syarikat bertukar nama, alamat, perubahan barangan yang dikilangkan (menambah atau berhenti mengilang sesuatu barangan).
   - 1.3 Gagal memaklumkan dan mengemukakan salinan asal lesen apabila berhenti beroperasi.

2. Silap atau gagal mengemukakan Penyata C.J. No.3/CP. No. 3 dan bayaran pada masa yang ditetapkan.

   Akibatnya:-
   - 2.1 Melambatkan pemprosesan pembayaran cukai terutama pada bulan pembayaran di bawah bulan ganjil.

2.2. Timbul masalah cukai dan penalti tertunggak dan meningkatkan Akaun Belum Terima (ABT).
2.3. Pemegang lesen mengemukakan rayuan meremitkan cukai dan penalti. Penyediaan laporan permohonan memakan masa dan menambahkan beban kerja.

3. Pemegang lesen gagal menyimpan rekod dan akaun seperti dikehendaki oleh Akta-akta tersebut. Akibatnya:
3.1 Cukai jualan/cukai perkhidmatan kurang dibayar dan penalti dikenakan.
3.2 Terjadinya tuntutan cukai jualan/cukai perkhidmatan kurang dibayar dan penalti dikenakan.
3.3 Akaun Belum terima (ABT) akan meningkat. Peningkatan ABT akan mencerminkan kurang keberkesanan Jabatan dalam menguatkuasakan Akta-akta tersebut.

4. Pemegang lesen kurang faham mengenai kemudahan-kemudahan yang ada di bawah kedua-dua Akta. Akibatnya kemudahan-kemudahan berkenaan tidak dimanfaatkan dengan sempurna, teratur dan berkesan.

Intipati cadangan:

Pemegang lesen cukai jualan dan cukai perkhidmatan mesti mengambil berat tentang mematuhi kehendak Akta dan Peraturan-peraturan berkaitan pelesenan.

Bentuk-bentuk cadangan:
i) Pemohon kemukakan sendiri borang JKED No. 1.
ii) Hadir sendiri majlis taklimat.
iii) Ambil sendiri lesen yang dipohon.

Keputusan

Setelah diperbincangkan cadangan yang dikemukakan oleh Bahagian Cukai Dalaman, beberapa penetapan telah dibuat bagi perkara-perkara berikut :

i. Borang-borang permohonan bagi lesen Cukai Jualan dan Cukai Perkhidmatan dikemukakan sendiri oleh pemohon. Pegawai-pegawai yang mewakili syarikat sama ada pengurus, pengarah atau pegawai yang bertanggungjawab.
ii. Majlis penyerahan lesen berkehendakkan orang yang bertanggungjawab datang bagi penyerahan lesen. Ini kerana dalam majlis penyerahan lesen, diadakan taklimat tentang tanggungjawab pemegang lesen. Ini memerlukan penglibatan pegawai tinggi syarikat supaya hadir di taklimat tersebut.
iii. Pegawai yang bertanggungjawab ke atas syarikat hendaklah hadir semasa penyerahan lesen supaya lesen tidak jatuh ke tangan orang yang tidak bertanggungjawab.

Dengan mengambil sendiri salinan asal lesen, ia dapat menimbulkan rasa tanggungjawab pemegang lesen terhadap kehendak pelesenan berkenaan. Ini juga memberi peluang kepada pemegang lesen untuk bertanya kepada pegawai kan berkaitan perkara-perkara yang masih diraguinya.

Untuk Maklumat

UCAPAN PENUTUP PENGERUSI

Yang Berbahagia Datuk Pengerusi mengucapkan berbanyak terima kasih kepada semua yang hadir dan telah memberikan sumbangan fikiran dalam mesyuarat kali ini. Beliau berharap semua pihak mengambil tindakan ke atas apa yang telah dipersetujui.

Beliau juga meminta pihak swasta supaya dapat menghantar wakil yang berpengalaman bagi bersama-sama Jabatan memajukan perkhidmatan supaya setanding dengan negara-negara maju.

Akhir sekali, beliau mengucapkan terima kasih dan selamat pulang ke tempat masing-masing dan mengatakan panel akan berjumpa sekali lagi pada bulan November 1998, iaitu, selepas Belanjawan 1999.

(MOKHTIAR BIBI SHER MOHD)
Setiausaha
Panel Perundingan Kastam/Swasta
Ibu Pejabat Kastam dan Eksias Diraja
Malaysia

(DATUK HJ. AHMAD PADZLI MOHYIDDIN)
Pengerusi
Panel Perundingan Kastam/Swasta
Ibu Pejabat Kastam dan Eksais Diraja
Malaysia

Guidelines On Double Deduction Claims Under Section 34B, Income Tax Act 1967

PROCEDURE FOR APPLICATION

1.1 **Category of research institute/company**

Claims can only be made if cash contribution or payment for--the use of research services is made to an approved research institute/companies as follows :

CATEGORY OF INSTITUTE/COMPANY	APPROVAL
i) Approved research institute/company	Approved under section 34B(4)(a) or 34B(4)(b) respectively
ii) Research and development company	Has fulfilled the definition under section 2 of the PIA 1986
iii) Contract research and development company	Has fulfilled the definition under section 2 of the PIA 1986

1.2 **Claim for double deduction on payment for the use of services of a research institute/company**

Form

Form **DD2/1995(Pin.2)** is to be submitted together with the income tax return for the relevant year of assessment to:

i) Branch of Inland Revenue Board which handles the tax assessment file (1 copy with supporting documents for expenditure incurred)

ii) Chief Executive/Director General Inland Revenue,
Inland Revenue Board,
Technical Division,
Block 11, 15 Floor,
Government Offices Complex
Jalan Duta,
50600 Kuala Lumpur.

(1 copy **without** supporting documents for expenditure incurred)

1.3 **Claim for double deduction on payment for cash contribution to an approved research institute**

Claim can be made by attaching the original receipt of cash contribution when submitting the return form for the relevant year of assessment.

2. ALLOWABLE EXPENDITURE UNDER SECTION 34B

2.1 General

Section 34B of ITA 1967 provides that expenditure not being capital expenditure incurred on cash contribution to an approved research institute or payment for the use of services of an approved research institute/company, research and development company and contract research and development company qualifies for double deduction.

2.2 Cash contribution

Cash contribution or donation is allowable if made:-

i) to an approved research institute only, and

ii) contribution is not for the purpose of purchasing a capital asset, for example contribution towards a building fund or for the purchase of plant and machinery.

2:3 Payment for the use of services of an approved research institute/company

i) Payment of a capital in nature does not qualify for double deduction.

ii) This deduction will not be given to a **related** company of a research and development company which has been granted and is still enjoying investment tax allowance under the Promotion of Investment Act 1986.

2.4 Where any deduction in respect of expenditure is made under section 348, no deduction in respect of that expenditure shall be made under section 33, 34 or 34A.

Borang DD2/1995(Pin.2)

Ketua Eksekutif/Ketua Pengarah Hasil Dalam Negeri,
Lembaga Hasil Dalam Negeri,
Tingkat 15, Blok 11,
Kompleks Bangunan Kerajaan,
Jalan Duta,
50600 Kuana Lumpur,

Claim For Double Deduction On Research Expenditure Under Section 34B of the Income Tax Act, 1967.

Part I of this form is to be completed by a person who claims for double deduction on payment for the use of services of an approved research institute/company/research and development company/contract research and development company. Part II and III however is to be completed by the approved research institute/company, research and development company/contract research and development company. All particulars in this form are to be properly furnished where applicable and Declaration and Confirmation completed and signed.

Borang DD2/1995(Pin.2)

Ketua Cawangan
Lembaga Hasil Dalam Negeri,
.....
.....

ORIGINAL APPLICATION

Ketua Eksekutif/Ketua Pengarah Hasil Dalam Negeri,
Lembaga Hasil Dalam Negeri,
Unit 35, Bahagian Teknikal,
Tingkat 15, Blok 11,
Jalan Duta,
50600 Kuala Lumpur.

1 Copy

Claim For Double Deduction On Payment For The Use of Services of An Approved Research Institute/Company, Research And Development Company, Contract Research Of The Income Tax Act 1967.

This form should be used for claims from 1 July 1998.

Year of Assessment:.....

Basis Period:.....

PART I: PARTICULARS OF CLAIMANT

Name:
.....

Income Tax reference number:
.....

		Office:	Factory:
(a)	Address:	.....	.....
(b)	Telephone No:	.....	.....

(a) Date of incorpration of company:
.....

(b) Date of commencement of business:
.....

Equity structure:

(a) Malaysian: ..... %

(b) Non-Malaysian(specify country) ..... %

Principal activity of Company:
.....

Types of products:
.....

Incentives currently enjoyed or had been approved in principle under the Promotion of Investments Act 1986/ Income Tax Act 1967

a. Type of incentive : .....
b. Date of approval : .....
c. Period : .....
d. Product : .....

Amount claimed for double deduction in the basis year:

Bills/Invoice No*.	Date	Amount	Date of Payment
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Total .....

ttached original copies of bills or invoices.

Part II and III below are to be completed by the research institute/ company
[If boxes are provided, please tick ✓ where appropriate]

PART II: PARTICULARS OF *RESERACH INSTITUTE/ COMPANY*

1. Name of research institute/company:
.....

2. Address:
.....
.....
.....

3. Income Tax reference number:
.....

4. Date of approval as a research institute/company:
.....

5. Category of research institute/company

a) ☐ Approved Research Institute/Company (Approved under Section 34B(4)(a) and (b) resepctively of the ITA 1967).

b) ☐ Research & Development Company (Approved under the Promotion of Investments Act 1986).

Confirm whether the company is enjoying investment tax allowance under the Promotion of Investments Act 1986

☐ Yes ☐ Period.....

☐ No

c) ☐ Contract Research & Development Company (Approved under the Promotion of Investments Act 1986)

6. Whether related with the applicant:

☐ Yes ☐ No

PART III: DETAILS OF SERVICES RENDERED AND PAYMENT CHARGED BY THE RESEARCH INSTITUTE/COMPANY

For every amount claimed by the claimant in paragraph 9 of Part I, please furnish the following information:

1. Analysis and basis of computing the payment charged (To be completed if the claimant and the research institute/company are related):
.....
.....

2. The period of services for which the payment is charged:
.....
.....

PART IV: DECLARATION AND CERTIFICATION

I. Declaration by claimant:

I hereby:

1 certify and declare that all the particulars furnished in Part I of this application form are true and correct.

2. certify and declare that the amount for which this claim is made is payment for the use of services (not including capital expenditure) as provided under Section 34B of the Income Tax Act 1967.

Signature : .....
Name : .....
Designation : .....
Company's Stamp : .....
Date : .....

II Confirmation By The Research Institute/Company

I/We hereby certify and declare that the particulars stated in Part II and Part III of this application form are true and correct and the amount claimed by the claimant is payment for the use of services (not including capital expenditure) as provided under Section 34B of the Income Tax Act 1967.

Signature : .....
Name : .....
Designation : .....
Institute/Company's Stamp : .....
Date : .....

3. Title and brief description of the research project:
.....
.....

4. Brief description of the works carried out for the research project:
.....
.....

5. Whether there is service agreement with the claimant:

☐ Yes ☐ No

6. Location where research is carried out:
.....
.....

EXTERNAL AUDITOR'S CERTIFICATION (PART F) IN FORM EPS/BT/1998 FOR REINVESTMENT ALLOWANCE CLAIMS UNDER SCHEDULE 7A, INCOME TAX ACT 1967

A meeting was held between the Institute, MIA, MACPA and the Inland Revenue Board (IRB) on 5 August 1998 on the above matter.

Following the discussion, the IRB has informed that they have decided to delete Part F in the Reinvestment Allowance (RA) Claim Form. Therefore, all RA claim forms submitted by companies for the year of assessment 1998 and subsequent years of assessment are not required to complete Part F of the form pertaining to the certification by a qualified external auditor. It follows that the responsibility to ensure that the RA Claims are in order rests on the taxpayer.

Please be guided accordingly.

INCOME TAX ACT 1967
INCOME TAX (EXEMPTION / AMENDMENT / DOUBLE TAXATION AGREEMENT) ORDERS 1998
(Income Tax Orders, Rules, Amendments and Treaties for the months of May to June 1998)

NO	TITLE	REFER P.U. (A)	DATE OF GAZETTE NOTIFICATION	SUBJECT	EFFECTIVE DATE/REMARKS
14	Inocme Tax (Qualifying Plant allowance (Computers And Information TEchnology Equipment) Rules 1998	187	5/7/98	An initial allowance of 20% and an annual allowance of 40% on Y/A 1996 qualifying plant expediture incurred on the provision of computers and information technology equipment used for th purpose of a business. "Information technology equipment" includes equipment used in the gathering, processing and communication of information through computerisation and telecommunications combined. **Schedule** Access Control System Banking Systems Barcode Equipment Bursters/Decollators Cables & Connecters Computer Assisted Design (CAD) Computer Assisted Manufacturing (CAM) Computer Assisted Engineering (CAE) Card Readers Computers and Components Central Processing Unit (CPU) Storage Screen Printers Scanner/Reader Accessories Communications & Networks	Y/A 1998
15	Income Tax (Exemptions) (No. 9) Order 1998	189	5/7/98	All income of the Composite Technology REsearch Malaysia Sdn Bhd (excluding dividend Income) exempt from tax	Y/A 1997 to Y/A 2001
16	Income Tax (Exemptions) (No. 10) Order 1998	201	5/28/98	Tax exemption for a person who is a resident of "TECO" (means the are represented by th TAipei Economic and Culture Office in Malaysia.) in respect various income.	Y/A 2000 for more details refer to the Order P.U. (A) 201
17	Income Tax (Exemptions) (No. 11) Order 1998	202	5/28/98	1. Tax exemption for an invididual, or a company carrying on the business of banking or insurance, resident in Malaysia, in respect of income received or derived from TECO (Taipei Economic and Cultrual Office) where such income has been subject to tax in TECO, for a basis period for year of assessment. 2. Income Mentioned in the preceding refers to amount, if tax is charged on it, that tax will equal	

NO	TITLE	REFER P.U. (A)	DATE OF GAZETTE NOTIFICATION	SUBJECT	EFFECTIVE DATE/REMARK
				to an amount, if tax is charged on it, that tax will equal to an amount, arrived at by the following formula: Income from TECO x Total Tax Total Income	
18	Income Tax (Exemptions) (No. 12) Order 1998	216	6/4/98	Tax exemption for a 'Local', up to an amount equivalent to 70% of the adjusted income derived from the carrying on of a business at the Kuala Lumpur Commodity Exchange. Local means any individual who is allowed to trade on "KLCE" for his own account in any futures market of the "KLCE".	Y/A 1995 to subsequent Y/A
19	Income Tax (Exemptions) (No. 13) Order 1998	223	6/11/98	The Income derived from accumulated investment funds of the Yayasan Perumahan Untuk Termiskin (YPUT) exempt from tax.	Y/A 1997 to Y/A 2001
20	Income Tax (Exemptions) (No. 14) Order 1998	224	6/11/98	Tax exemption for the thirty (30) foreign artistes who were in Malaysia for their performance in the Little Children Art Group of th Democratic People's Republic of Korea held on 30/9/97 at the Sunway Lagoon and Resort Hotel, on 2/10/97 at the Dewan Sri Pinang and on 3/4/97 at the Dewan San Choon KL, in respect of income in the form of benefits-in-kind.	
21	Income Tax (Exemptions) (No. 15) Order 1998	225	6/11/98	All income of the Yayasan Islam Kelantan (excluding dividend income) exempt from tax.	Y/A 1997 to Y/A 2001
22	Income Tax (Exemptions) (No. 16) Order 1998	232	6/18/98	Tax exemption for the Petro Plus Sdn. Bhd., Varia-Perdana Sdn. and TL Marine Sdn Bhd in respect of income derived from the transporting and operating of crew, utility and supply for the usage of oil platforms for the supply bases in Malaysia, provided that the supply vessels used are - (i) Owned by the company and (ii) registered under the Merchant Shipping Ordinance, 1952.	Y/A 1994 to Y/A 1998
23	Income Tax (Exemptions) (No. 17) Order 1998	233	6/18/98	Tax exemption for Syarikat Bumi Armada Navigation Sendirian Bhd in respect of on income derived from the transporting and operating og crew, utility and supply for the usage of oil platforms for the supply bases in Malaysia, provided supply vessels used are:- (i) owned by the company, and (ii) registered under the Merchant Shipping Ordinance, 1952.	Y/A 1995 to Y/A 1999

NO	TITLE	REFER P.U. (A)	DATE OF GAZETTE NOTIFICATION	SUBJECT	EFFECTIVE DATE/REMARKS
[illegible]	Income Tax (Exemptions) (No. 18) Order 1998	234	6/18/98	Tax exemption for Syarikat Smit-Llyod (M) Sdn Bhd. Syarikat Maritime (M) Sdn. Bhd. and Syarikat Jasa Merin (M) Sdn. Bhd. in respect of income derived from transporting and operating of crew utility and supply for the usage of oil platforms for supply bases in Malaysia, provided that the supply vessles:- (i) owned by the company, and (ii) registered under the Merchant Shipping Ordinance, 1952.	Y/A 1996 to Y/A 2000

MEMBERSHIP OF MIT AS AT 29 SEPTEMBER 1998

The following persons have been admitted as associate members of the Institute as at 29 September 1998.

NAME	MEMBERSHIP NO.
[illegible]ERARD THIAGARAJAN A/L RAJARATNAM	1502
[illegible]EE CHOON HEE	1503
[illegible]HAN CHI LEE	1504
[illegible]UK SIEW PENG	1505
[illegible]N KAH SEONG	1506
[illegible]AN CHEW YEAN	1507
[illegible]EE WING PENG	1508
[illegible]HONG LAI QUAN	1509
[illegible]AU WHOAY LING	1510
[illegible]OK CHAR LEE	1511
[illegible]ONG TENG	1512
[illegible]IEW LEE LEONG	1513
[illegible]IM ENG KEAN	1514
[illegible]G MENG HUAT	1515
[illegible]OR WAI HOONG	1516
[illegible]OH KHENG BOON	1517
[illegible]IM SENG HIN	1518
[illegible]ISHIN KUMAR BINWANI	1519
[illegible]OI HOOI KIN	1520
[illegible]UPPIAH A/L POONGAVANAM	1521
[illegible]AN HOCK SEONG	1522
[illegible]OO KIEN MENG	1523
[illegible]UEK JOO KHIANG	1524
[illegible]OW LIM CHONG	1525
[illegible]WONG GUANG SENG	1526
[illegible]WONG YIM SING	1527

The following persons have been admitted as fellow members of the Institute as at 29 September 1998.

NAME	MEMBERSHIP NO.
LIM CHIAM KAY	340
CHONG FOOK HIN	491
TAN POH LIAN	494
YU CHEE HUNG	496
LAU KENG CHIAN	497
TAN HOCK KIM	498
LAU WEE HUNG	500
VIKNESVARAN S/O ARUMUGAM	502
YEO ENG SENG	505
LEE SOO HONG @ LEE SOO PIN	508
KANG TAI PENG	509
LEAN CHEE SENG	510
YEO ENG SIANG	521
LIM TENG JEN	523
CHENG BAK CHOOI	528
LIONEL KOH KOK PENG	531
TOR PEN KUAN @ TOH PEN KUAN	537
WAI TEAK CHONG @ NGUI TEAK CHONG	539
LOO KOK THAI	543
YOONG CHAN PONG	546
CHAN LIANG SOON	550

MEMBERSHIP STATUS OF MIT AS AT 29 SEPTEMBER 1998

Honorary Fellows	8
Fellows Members*	341
Associate Members*	1171
	1512

*** Fellow and Associate Members**

Public Accountants of MIA	891
Registered Accountants of MIA	175
Licensed Accountants of MIA	16
Advanced Course Exam of IRD	119
Advocates & Solicitors	7
Approved Tax Agents	125
MIT Graduate	2
Others	177
	1512

AOTCA

SIXTH GENERAL COUNCIL MEETING
THIRD REGULAR GENERAL MEETING

On November 12th and 13th, 1998 Malaysian Institute of Taxation will proudly host the Asia- ceania Tax Consultants' Association (AOTCA) Sixth General Council Meeting and Third Regular General Meeting at Shangri-La Hotel, Kuala Lumpur.

It was 6 years ago AOTCA was established as part of the commemorative activities held in the year 1992 by the Japan Federation of Certified Public Tax Accountants Association (JFCPTA) to mark the fiftieth anniversary of the certified public tax accountants system in Japan and was realised through the approval of organisations of professional tax specialists in the Asia-Oceania region.

Today, AOTCA has increased its number from 10 bodies to 12 in membership since its inception and functioned actively from year to year. These member bodies get together with a common vision i.e. to promote the exchange of information on the tax systems, tax administration, tax consultant systems and market as well as economic trends in countries of the Asia-Oceania region and facilitating the exchange knowledge and expertise in tax accounting work. Beside that, AOTCA also aims to establish a professional network regarding tax matters and deepen friendship and goodwill among its member organisation and their individual members.

AOTCA was under the leadership of Mr Teruaki Kataoko (Managing Director of JFCPTA) from 1993 to 1996 and was assisted by Norihisa Maeda, Secretary General of AOTCA.

Mr Kataoka was of the opinion that there are already many international organisations in the field of accountancy; however in tax there are very few. He was pleased with the fact that AOTCA was the first international organisation in tax in the Asia-Oceania region. Further, he commented that the establishment of AOTCA has epoch-marking significance in terms of building a professional network with growing internationalization and specialization of tax matters.

When Mr Kataoka retired in 1996, Mr David Russell, QC (Chairman of International Committee of Taxation Institute of Australia) was enunciated as the President of AOTCA and be is currently being assisted by Mr Peter Cowdroy, Secretary General of AOTCA.

Upon accepting office, Mr Russell pledged that the taxation system should be harmonised in the near future and the taxation and the individual features of particular taxation system which discourage enterprises be changed. He feels so since the globalisation of Asia-Oceania region economies proceeds, it will be increasingly important for the tax professionals throughout the Asia-Oceania region to be aware of the taxation system and other tax profession in countries other than their own. Therefore, he is of the opinion that harmonisation will be necessary so that they can properly serve those of their clients also engaged in international transaction.

Mr Russell also mooted the idea to hold an international convention at the First Regular General Meeting in 1994 and upon accepting office, he proposed to carry out this suggestion with positive measures. Hence, it was decided at the Second Regular General Meeting in 1996 that the 1st International Convention will be held in Malaysia together with the Third Regular General Meeting in 1998.

Unfortunately due to the current economic turmoil faced not only by Malaysia but by other Asian countries as well, it was decided that the convention should be postponed to a later date. However, Malaysian Institute of Taxation believes that it will be able to kick off a successful convention in Kuala Lumpur next year since the country's economy is recovering gradually.

Thus, since this is the first time MIT will be hosting the AOTCA Sixth General Council Meeting and Third Regular General Meeting, an active schedule has been drawn up for the participants of these meetings.

On November 12, 1998 the AOTCA Council held its meetings in the morning which will be followed by a half day seminar attended by all delegates. The first presentation will be on "The Current Investment Enviroment and Incentives for Foreign Investors in Malaysia by Mr Ahmad Tajuddin Omar, Assistant Director of Promotion Division from Malaysian Industrial Development Authority to update the delegates on the opportunity for investment in Malaysia. After that Mr Chew Theam Hock, Director of Tax from KPMG Peat Marwick will deliver a talk on Malaysia's Recent Capital Control and Other Economic Measures

After the Regular General Meeting on 13th November, 1998, the delegates will participate in an open forum seminar. There will be presentation by speakers from Hong Kong, Japan, Korea and Taiwan on "Asian Economic Crisis - Our Country's Fiscal and Economic Response". This will then be followed by a question and answer session.

Finally, on the last day the delegates will enjoy a full day excursion to the Historical Malacca Town.

The MIT will like to take this opportunity to extend our sincere gratitude to the following member organisation who have given due support and opportunity for MIT to host these meetings in Kuala Lumpur :

All Pakistan Tax Bar Association

Australia Society of Certified Public Accountants

Institute of Certified Public Accountants of Singapore

Institute of Chartered Accountants in Australia

Japan Federation of Certified Public Tax Accountants Association

Japan Tax Research Institute

Korea Association of Certified Public Tax Accountants

Tax-Accountancy Association of Republic of China

Taxation Institute of Australia

Taxation Institute of Hong Kong

The Tax Management Association of Philippines

Professional Examinations

of

The Malaysian Institute of Taxation

Now Open For Registration

Professional Examinations

One of the main objectives of the Malaysian Institute of Taxation (MIT) is to train and build up a pool of qualified tax personnel as well as to foster and maintain the highest standard of professional ethics and competency among its members.

One avenue of producing qualified tax personnel is through professional examinations. As such, MIT conducted its first professional examinations in December 1995. Todate, the MIT had successfully conducted three examinations. This is the only professional examination in Malaysia in the discipline of taxation. The professional examinations also seeks to overcome the present shortage of qualified tax practitioners in the country.

Examination Structure

The professional examination is currently held annually and comprises of three levels.

FOUNDATION LEVEL	INTERMEDIATE/LEVEL II	FINAL/LEVEL III
● Taxation I	● Taxation II	● Taxation IV
● Economics	● Taxation III	● Taxation V
● Business Statistics	● Company & Business Law	● Business & Financial Management II
● Financial Accounting I		● Financial Accounting

How to Register

You can contact the Institute's Secretariat for a copy of the Students' Guide. The Guide contains general information on the examinations and a set of registration forms which must be completed and submitted with the necessary documents to the Secretariat.

Entrance Requirements

(a) Minimum Entry
- At least 17 years old.
- At least two principal level passes of the HSC/STPM examination (excluding Kertas Am/Pengajian Am) or the equivalent.
- Credits in English Language and Mathematics and an ordinary pass in Bahasa Malaysia at MCE/SPM.

(b) Degrees, diplomas and professional qualifications (local/overseas) recognised by the Institute to supersede minimum requirements in (a).

(c) Full Members of local and overseas accounting bodies.

(d) Matured Age Entry (Minimum 23 years).

Exemptions

Exemption from specific papers in the professional examinations is available and extent of exemption granted will depend or qualifications attained and the course contents as determined by Council.

Exemption Fees

Level I	RM50.00 per subject
Level II	RM60.00 per subject
Level III	RM70.00 per subject

Examination Fees

Level I	RM40.00 per subject
Level II	RM50.00 per subject
Level III	RM60.00 per subject

DATES TO REMEMBER

September 1
Closing date for registration as a student to sit for the examination of that year.

October 15
Closing date for submission of examination entry form for the examination of that year.

December
EXAMINATION

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

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Education Department (MIT)
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1996 EXAMINATIONS BOOKLETS	RM5.00 ☐	RM6.00 ☐	RM11.00 ☐
1995 EXAMINATIONS BOOKLETS	RM5.00 ☐	RM6.00 ☐	RM5.50 ☐
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PERSONAL RELIEFS FOR INDIVIDUAL TAXPAYERS: AN UPDATE

by
Dr. Jeyapalan Kasipillai

INTRODUCTION

The Malaysian Income Tax Act, 1967 (ITA) provides various forms of personal reliefs to individual taxpayers. The tax reliefs are, however, only available to an individual who is resident in Malaysia. The resident status of an individual is determined under Sec. 7 Income Tax Act (ITA). In general, residence status of an individual is determined by the number of days an individual physically stays in Malaysia. .The personal reliefs are deducted from the total income to arrive at chargeable income of the taxpayer. If all other factors remain constant, higher the quantum of reliefs of an individual, lower would be his or her tax payable. Companies, clubs, trust bodies and estates under administration are not eligible for personal reliefs.

TYPES OF RELIEFS

The types of reliefs that are currently claimable under the ITA are:

- Personal relief [(Sec. 46 (a), (b)]
- Medical expenses [(Sec. 46(c)]
- Basic Supporting Equipment [Sec 46(d)]
- Disabled person [Sec. 46(e)]
- Course fees to pursue education [Sec 46(f)]
- Serious disease [Sec. 46 (g)]
- Wife relief (Sec. 47)
- Child relief (Sec. 48)
- Life insurance premiums and provident fund contributions (Sec. 49)

The tax reliefs outlined below are applicable for year of assessment 1998, that is, for basis year 1997. This section also explains the allowability of each of the reliefs mentioned above. Appropriate examples are given to illustrate important principles stated in the Act.

PERSONAL RELIEF [(Sec. 46 (a), (b)]

An individual taxpayer is entitled to a personal relief of RM5,000 comprising of RM4,000 as allowance for the individual and another RM1,000 as relief for dependent relatives. The relief for dependent relatives is automatically given and therefore every taxable individual is entitled to RM5,000.

A wife whose income is assessed separately is also eligible for a personal relief of RM5,000.

EXAMPLE 1
Ali received casual income of RM24,000 in 1997. He is single and has no other sources of income.

Required: Compute Ali's chargeable income for year of assessment 1998

His chargeable (taxable) income for year of assessment 1998 is as follows:

Total income	RM 24,000
Less: Personal relief	RM 5,000
Chargeable (taxable) income	RM 19,000

MEDICAL EXPENSES [Sec. 46 (c)]

An individual taxpayer is entitled to a relief up to a maximum RM5,000 in respect of amounts expended on the medical expenses of his or her parents in a given basis year. The claim must be validated by a receipt issued by a medical practitioner certifying that the treatment was provided to his or her parents.

Scope of medical expenses
The Inland Revenue Board allows normal medical expenses as well as costs of maintaining parents in nursing homes. Where more than one child has contributed to the medical expenses of the parents, each claimant would be given the relief up to a maximum of RM5,000 as long as they can provide a certified official receipt. Where the expenses have been shared, the amount incurred can be apportioned between the children. If the receipt has been issued in the name of the parent, an endorsement on the receipt by the medical practitioner that the bill has been paid by the child would be required by the IRB.

Where the wife is assessed separately, she can claim the medical expenses incurred on her parents as a deduction. However if she has elected for joint assessment, only the husband can claim a deduction for medical expenses expended on his parents.

BASIC SUPPORTING EQUIPMENT [Section 46(d)]

An individual would be entitled to a maximum of M5,000 for the purchase of any medical equipment for:-
(i) himself (if he is a disabled person) or
(ii) for the use of his wife, child or parent if they are disabled

DISABLED PERSON [Section 46(e)]

An additional deduction of RM5,000 (other than normal relief of RM5,000) is given to a disabled individual. An individual is disabled if he or she is certified as disabled by the Department of Social Welfare. The relief for a disabled person also applies to a taxpayer of wife who is assessed separately.

COURSE FEES [Section 46(f)]

A resident individual would be given a relief up to a maximum of RM2,000 for fees expended in that basis year for the purpose of acquiring technical, vocational or industrial skills in an institution recognized by the government in Malaysia.

All educational institutions licensed by the Ministry of Education would be recognized by the Government. Expenses for courses such as management, marketing, financial, and commercial are not allowed as a deduction. The course has to be undertaken by the individual for his or her own benefit for the taxpayer to enjoy such a deduction.

SERIOUS DISEASE [Section 46(g)]

An individual taxpayer is entitled to a relief of up to RM5,000 a year in respect of medical expenses incurred on himself, his spouse or child who is suffering a serious disease. 'Serious diseases' could include AIDS; Parkinson's disease, cancer, renal failure, leukemia and other similar diseases. To claim for this relief, a receipt and certificate issued by a medical practitioner that treatment had been provided to the individual, spouse or child for that disease must accompany the claim. A provisional diagnosis given by a registered medical practitioner cannot be deemed to be a certification as such.

If the wife has no income, the claim by the husband is limited to a maximum of KM5,000. If the wife has income and elects for joint assessment, a maximum of RM10,000 would be given to the couple.

WIFE RELIEF (Section 47)

Where a resident individual has a wife living with him in a basis year, he is entitled for a relief of RM3,000. This relief would not be given if the wife is assessed separately.

Where in that basis year, the wife ceases to live together with the husband or where he and his wife cease to be husband and wife, the RM3,000 is, nevertheless, fully given to the husband in that basis year. No apportionment is required. Thereafter, the husband would not be granted wife relief. In situations where the husband has made alimony payments in the basis year, such payments are allowed as relief to the husband but the total of the relief given under Section 47(1) shall not exceed RM3,000.

CHILD RELIEF (Section 48)

A taxpayer who is resident in Malaysia during the basis year for a year of assessment could claim for child relief under any of the following circumstances:-

a) He maintains a child under the age of 18 who is unmarried.

b) He maintains an unmarried child, who is receiving full time instruction at any university, college, school or other educational estabiishment. This relief is given to taxpayers even if the child is over the age of 18.

c) He maintains an unmarried child, who is serving under articles or indentures with a view to qualifying in a trade or profession at any time in the basis year in any of the following ways:-
   i) paying for any part time education of the child related to the trade profession he or she is in,
   ii) paying premiums for the articleship or indentures
   iii) paying any other expenditure relating to the articleship or indentures.

   Taxpayers can claim this relief regardless the age of the child.

d) He pays for the maintenance of an unmarried physically or mentally disabled child.

   The age of the disabled child is not relevant.

Number of children qualifying for relief

The number of children who qualify for child relief is not restricted, so long as they fulfill the requirement stipulated in Sec. 48 ITA. The amount of the relief is RM800 for each child. However, the relief for each disabled child is RM5,000.

Increased child relief

There are situations where increased reliefs are given in respect of children pursuing their education in and outside Malaysia.

- **Pursuing education in Malaysia**
  A resident taxpayer who maintains a child who is above the age of 18, and
  (1) studying full time at a university, college or any other higher educational establishment; or
  (2) serving under articles or indentures in order to qualify in a trade or profession.

A deduction up to the maximum of RM3,200 (4 times the ordinary deduction) can be claimed by a taxpayer if he can prove to the revenue authorities he has spent such sums on the maintenance ofthe child during the basis period.

Pursuing education outside Malaysia

A resident taxpayer who maintains a child above the age of 18, and

(1) studying full time at a university, college or other establishment of higher education, or

(c) serving under articles or indentures with a view to qualifying in a trade or profession outside Malaysia, will be entitled to double the normal deduction but not exceeding the actual sum expended. If the child commenced his or her education prior and including the year of assessment 1994, the maximum relief of four times the normal relief will continue to be available to the parent.

With effect from 17 October 1997, parents will only be eligible for the normal child relief, i.e. RM800.

EXAMPLE 2

Sam has furnished the following details to IRB for basis year 1997.

- First child (20 years) is studying at Griffiths University, Australia commencing December 1997. Sum inclured during the year by Sam is A$12,000 (RM27,500).
- Second child (18 years) is studying at Universiti Utara Malaysia. Sam incurred RM3,400.
- Third child (17 years) is attending a secondary school.
- Fourth child (16 years) is physically handicapped. Attending a Special-Care School.
- Fifth child (11 years) is attending a primary school.
- Sixth child (4 years). Born with a defective heart. Passed away on 30 September 1997

Required: Determine total child relief claimable by Sam for year of assessment 1998.

The reliefs claimable are computed as follows.

Quantum of relief (RM)		Notes
• First child	800	Normal child relief
• Second child	3,200	(RM800 x 4)
• Third child	800	Normal relief
• Fourth child	5 000	(Increased relief)
• Fifth child	800	(Normal relief)
• Sixth child	800	(Full relief/No apportionment)
Total relief	11,400	

Life insurance premiums and provident fund contributions (Sec. 49)

The sub-section outlines the reliefs provided under Sec. 49 ITA, There are two different types of relief that are available, namely (i) life insurance premiums and (ii) contributions to an approved provident fund.

Life insurance premiums

Definition for'insurance premiums' or'deferred annuity'

According to Sec. 49(3) ITA, insurance or deferred annuity is defined to mean an insurance or deferred annuity contracted for by the individual:

(a) on the individual's life;
(b) on the life of a wife of the individual or, where the individual is a female, on the life of the individual's husband; or
(c) on the joint lives of the individual and a wife or wives or his or on the joint lives of two or more wives of his or, where the individual is a female, on the joint lives of-
  (i) the individual and her husband;
  (ii) the individual, her husband and any other wife or wives of his;
  (iii) the individual and any other wife or wives of her husband; or
  (iv) her husband and any other wife or wives of his.

A life policy taken out by the individual on the life of his child or jointly on his life with the child does not qualify for insurance relief. These premiums paid must be in respect of:
(i) life insurance premiums on the claimant or his wife's life, and
(ii) claimant's contribution to approved pension or provident funds.

Therefore the insurance premium must be paid in the basis year (and not merely payable) in order for the taxpayer to benefit from the insurance premium deduction. Furthermore, if the claimant receives a discount, then the net premium paid is allowed as a deduction.

EXAMPLE 3

Lam's life insurance premium payable for basis year 1997 is RM3,600. His insurance agent, however, provides him a discount of RM300.

Lam would only be able to claim a relief of (RM3,600-RM300) RM3,300 for year of assessment 1998.

EXAMPLE 4

Lam's life insurance premium paid in 1997 includes a premium on hospital benefits amounting to RM600. Is this portion of the premium allowable for personal deduction?

The portion of premium paid on hospital benefits (RM600) does not fall within the context of life insurance or deferred annuity as described under Section 49(3) ITA. Such a payment, however, is claimable under Section 49(1B) **(See 4.3 below)**.

EXAMPLE 5

Ron has also taken a personal accident policy and paid a premium of RM150 in 1997. Is this portion of RM150 claimable?

Premiums paid on personal accident policy would not qualify as it does not come within the context of Section 49(3) ITA.

- **Life insurance premium and receipt**

A taxpayer must enclose an original receipt when he or she has taken a new policy in respect of the insurance premium payment. A photocopy ofthe policy taken should also be

enclosed together with annual tax return. In subsequent years, the taspayer is encouraged to submit a photocopy of the receipt together with the return.

Contributions to Approved Scheme [Section 49(2)]
Contributions to approved schemes such as the Employees Provident Fund (EPF) qualify for relief. Such a contribution has to be obligatory by reason of any contract of employment, provision in the rules, regulations, bye-laws or constitution of the scheme. Where the contribution was partly obligatory and partly non-obligatory, only that part relating to the obligatory contribution will be allowed.

- **Insurance premium paid by wife (Joint Assessment)**
  (a) There are instances where a wife has no income to declare but has paid life insurance premium during the year. In such a situation, any insurance premium paid by the wife is deemed to be incurred by the husband. The maximum relief obtainable by the husband is RM5,000 **[Section 50(3)b]**.
  (b) There are instances where the wife has total income but has elected for joint assessment with the husband. In such a situation, a deduction of the aggregate amount of the payment of premium, or EPF contributions or both made by the wife or a deduction of RM5,000, whichever is the lower, will be available to the husband. This is in addition to the husband's threshold of RM5,000 for insurance premium, payment of EPF and other approved contribution **[Section 49(1A)]**.

As mentioned in (a) above, where the wife has no total income, the deduction however, shall not exceed RM5,000.

EXAMPLE 6
Fan and his wife, Nancy have their income assessed jointly. Life insurance premium paid and EPF contributions by both of them in 1997 are as follows:
(a) Nancy paid a insurance premium of RM800 on an insurance policy insuring her life.
(b) Fan paid an insurance premium of RM1,260 on an insurance policy insuring his life.
(c) Fan's contribution to EPF during the year is RM840.

What is the total relief under Section 49 ITA?

The total relief under Section 49 ITA for 1997 is RM800+ RM1,260+840=RM2,900.

EXAMPLE 7
Munu and his wife, Geeta made the following payments in 1997:

	Munu	Geeta
EPF	2,600	3,800
Life insurance premium	3,200	600

Geeta has elected forjoint assessment under Section 45(2) ITA.

Determine the aggregate insurance premium and EPF contributions claimable by Munu.

Computation of insurance premium paid and EPF contribution

	Munu	Geeta
EPF contribution	2,600	3,800
Insurance premium paid	3,200	600
Total	5,800	4,400
Compared with threshold limit	5,000	5,000
-take whichever is the lower	5,000	4,400

Therefore, the aggregate amount claimable by Munu is RM5,000+ RM4,400=RM9,400 and not RM10,000.

Premium for Education or Medical Insurance [Sec. 49(1B)]
When a resident individual pays any premium for insurance on education or for medical benefits for himself, his wife or child (in the case of a wife, herself, her husband or child), there shall be allowed an additional deduction for the insurance of an amount not exceeding two thousand ringgit (RM2, 000).

In case of a wife having elected for joint assessment (with her husband), a deduction of the aggregate amount of the payments made by the wife for any premium for insurance on education or medical benefits is an amount not exceeding two thousand ringgit (RM2,000). This sum is in addition to the RM2,000 incurred by the husband. If the wife does not have any total income, the deduction for education or medical insurance premium is, however, restricted to a maximum of RM2,000.

CONCLUSION

During the last couple of years, there has been an increasing number of tax reliefs made available to individual taxpayers. The reliefs are provided under Section 46 to 49 ITA.

The IRB has provided guidelines to explain various criteria for specific deductions under the ITA.

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Manuscripts should cover Malaysia or international tax developments. Manuscripts should be submitted in English or Bahasa Malaysia ranging from 3,000 to 10,000 words (about 10-24 double-space pages). Diskettes, (3 1/4 inches) in, Microsoft Word or Word Perfect are encouraged. Manuscripts are subject to a review procedure and the editor reserves the right to make amendments which may be appropriate prior to publication.

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

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

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		Fellow	Associate
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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.

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