MEMORANDUM

ON

2011 BUDGET PROPOSALS

(Together, Striving Towards A High- Income Economy)

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A INTRODUCTION

The future of our economy lies in increased productivity, improved innovation and competency of its workforce. The comprehensive measures and concerted efforts taken by the government on our national economy are beginning to gain some momentum. The Malaysian economy registered a strong growth of 10.1% in the first quarter of 2010. Both gross exports and imports grew by 30.8% and 35.1% respectively. Although domestic economic recovery is firmly established, there are still uncertainties arising from the international financial and economic environment.

In response to the Strategic Reform Initiatives (SRI) outlined in Part I of the New Economic Model (NEM) for Malaysia as published by the National Economic Advisory Council (NEAC), the Chartered Tax Institute of Malaysia (CTIM) is pleased to submit a memorandum relating to fiscal proposals for consideration in the forthcoming 2011 National Budget. CTIM being a professional association of the tax practitioners has focused its proposals mainly from the taxation perspective. The Memorandum has categorised its proposals broadly into the following aspects:-

- Stimulating the business environment
- Creating a competitive investment environment
- Strengthening growth in the services sectors
- Facilitating developments of local industries
- Enhancing the efficiency of tax administration
- Promoting equitable and business-friendly taxation system
- Extending the social safety net and promoting a caring society

The first is in response to SRI 3: creating a competitive domestic economy. It deals with the macro-strategy of improving the infrastructure for development and aligning regulatory, social and institutional policy framework, etc. to facilitate commerce and industry. The aim is towards setting up an equitable, transparent and efficient environment. The ultimate objective of course is to establish and promote confidence in the private sector. The task ahead is to build a sound governance and regulatory framework to reduce business operating costs, align incentives to promote productivity and local development, while maintaining a healthy balance between markets on the one hand, and policy interventions on the other.

The second deals with SRI 1 : Re-energising the private sector. The proposals are to enhance the confidence of foreign investors and facilitating investment in Malaysia. Although Malaysia has shifted its development emphasis to developing the local market, it is still important for the Malaysian economy to attract foreign direct investment. In this respect, converging with various international practices will enhance the competitive position of Malaysia.

SRI 2 seeks to develop a quality workforce with a reduction of foreign labour. Greater productivity can be achieved through the competent workforce, innovation, use of intellectual property rights, improved coordination, stronger branding and compliance with international standards and practices. SRI 6: seeks to build the knowledge base and infrastructure. The drivers of a knowledge economy are investment in new technology, multi skills, innovation and creativity. The third aspect of the proposals seeks to strengthen the services sector and continue the capacity development strategy. The Institute also proposes some measures to remove the structural hindrance for the development of the services sector.

The fourth is related to SRI 7: enhancing the sources of growth. A cause of concern is the drastic drop in private sector investment from an annual growth of 16% to 1% post-Asian crisis. The divestment of more government holdings, as announced by the Honourable Prime Minister, YAB

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Dato' Sri Mohd Najib Tun Razak, will certainly provide the thrust to local economy. CTIM's proposals focus on further improvement of the ongoing development initiatives in specific sectors of the economy.

In line with the Government Transformation Programme and SRI 4: strengthening the public sector, CTIM being a professional association of the tax practitioners, focuses its proposals on ways to improve the tax administration system.

In the spirit of 1Malaysia and SRI No. 5: transparent and market-friendly affirmative action, CTIM's proposals are made with a view to promote equitable and business-friendly taxation system.

Finally the proposals for SRI 8: ensuring sustainability of growth. CTIM recommends that the commitment by the Government to ensure economic and environmental sustainability be included in its national economic planning. While we move forward, measures to extend and improve social safety net programmes and to promote the spirit of a caring society must be included to support the welfare of Malaysia's most vulnerable citizens. In this respect, CTIM is of the view that, with rapid urbanization, the city poor is fast becoming an issue, which is not addressed in the NEM.

We hope that the matters suggested in the memorandum will contribute towards the preparation of the 2011 National Budget.

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B STIMULATING THE BUSINESS ENVIRONMENT

The first and most urgent task for the government agencies is to promote a conducive environment to stimulate businesses and investment. Through a more consultative approach and by engaging the main stakeholders, we can then broaden our views and be transparent to reach open consensus for the right way forward. In this respect, the Institute proposes the following measures to improve the clarity and transparency of the tax system, and reduce the feeling of injustice.

Although privatisation of government agencies and divestment of government holdings will provide the necessary thrust to the local economy, care must be taken on its social and business implications. For example, the proposed privatisation of Percetakan National Malaysia Berhad has raised the concern on the accessibility of law to the general public and increase in the costs of doing business in Malaysia. This is because, with the rapid changes in both the technological advancement and business environment, more sophisticated enactments and subsidiary legislation are being issued to meet the challenges. It can become costly for the rakyat and the businessmen to keep abreast of the latest developments, unless there are alternatives, such as websites of the BAR Council, Parliament, or Malaysian Courts, etc., where the Government allows the laws to be published and distributed for free and in a timely manner for free to the rakyat.

B-1 Public Rulings/Guidelines/Legislative amendments

a) Prospective implementation

Many public rulings/guidelines/legislative amendments have been issued and are applicable retrospectively. This is unfair to taxpayers in cases where a penalty is imposed during a tax audit on tax returns which had been submitted before the relevant Public Rulings were issued and the law had not been clear at that point of time.

The Institute is of the view that such a practice is not business-friendly and does not conform with international practice. The effective date for the application of a law or any guideline / public ruling should commence from the date an announcement of such legislation or amendment to the legislation is made to the public, and it should be prospective instead of retrospective.

b) Timely dissemination

In some instances, taxpayers are given a short time to understand and comply with the law (e.g. in cases where the guidelines / public rulings had been issued late), the information had only been made available to the public on the IRB's website after the date of the document.

The Institute suggests that appropriate lead-time should be given to taxpayers to comprehend and appreciate the implications of the legislation or amendments made thereto. Specific guidelines/public rulings should be issued on a timely basis to provide clarity on the tax treatment of new emerging business developments.

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c) **Publication of advance rulings**

It is understood that the advance rulings issued will not be published.

The Institute is of the view that the rulings should be published for general reference with the confidentiality of the taxpayers maintained. This will enhance transparency and clarity, thereby improving the efficiency of the tax administration.

d) **Disclosure on compliance with public rulings**

Taxpayers (including individuals) are required to make a disclosure in the income tax return form as to whether they have complied with the relevant Public Rulings. It is noted that the Public Rulings are issued to provide guidance for the public and officers of the IRB and not all the Public Rulings are relevant to a taxpayer.

CTIM suggests that the requirement to disclose compliance with the Public Rulings by a taxpayer in the tax return form should be removed.

B-2 Publication and application of decided tax cases

No legislation can be complete; hence case law provides the opinions of the courts on the interpretation of the legislation which are relied upon by taxpayers, practitioners and tax officers. However, the reports of recent decisions have not been readily available to both the public and the tax practitioners. Under such circumstances, this puts the taxpayers/tax practitioners in an unfair position as, under the self-assessment regime, they are expected to know the law.

The Institute is of the view that the IRB and the Royal Malaysian Customs (RMC), being the interested parties in all direct and indirect tax cases respectively and the authority to enforce the revenue law, are well placed to provide the essential information to all the stakeholders. The Institute suggests the following:

Tax cases decided by the Special Commissioners of Income Tax (SCIT), Customs Appeal Tribunal (CAT) and Courts should be made available to the public for better transparency through timely dissemination via the IRB's and Customs' websites, or other means. This is the practice in certain developed nations.

In addition, information should be made available regarding the status of "cases pending" so that tax agents/taxpayers may be informed whether a particular case is under appeal or settled out of Court or an appeal has been withdrawn.

The Institute is of the view that in preparing their tax computations, taxpayers should be allowed to adopt the decisions passed by the Courts (irrespective of the stage of appeal of the case) in respect of the interpretation of the legislation. There should be no penalty imposed on the taxpayer for following such Court decisions.

The Institute would be glad to assist in disseminating the latest information to its members in line with the need for tax practitioners to be fully aware of the decisions made by the SCIT, CAT and the Courts.

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B-3 Deduction of compliance expenditure

In order to ensure compliance with statutory requirements set out in specific legislation or by regulatory authorities, companies necessarily incur expenses such as tax agent's fees, secretarial fees and annual listing fees. Currently, only statutory audit fees incurred by companies are allowable expenses under The *Income Tax (Deduction for Audit Expenditure) Rules 2006.* In the Public Ruling No. 6/2006 -- Tax Treatment of Legal & Professional Expenses, it is noted that costs for filing income tax returns and computations, and secretarial fees are not deductible from year of assessment 2006. By disallowing such expenses, however, the government has increased the cost of doing business in Malaysia

The Institute is of the view that such practice is against the public policy of encouraging self-compliance. In addition to that, with more sophisticated social and economic development, regulatory compliance has become more complicated..

The Institute would like to highlight that salaries paid to professionals (like tax managers or company secretaries who are employed by corporations/organisations (in house services instead of services which are outsourced)) would be fully deductible as staff/salary costs. In reality, however, to achieve cost efficiency and to minimise the internal operational cost, most organisations outsource such services. Although the mode of activity is different, essentially, the cost is deductible, and the nature of work has not changed.

Further such practice is not consistent with the objective of the Government to promote the services sector. Malaysia, being a small country, will need to develop the local market first. Professional services are a significant component of the services sector and should therefore be promoted. As such, it is essential that deductions be allowed for compliance expenditure

In New Zealand, it is specifically legislated that a person is allowed a deduction for expenditure incurred in connection with matters relating to calculating or determining his income tax liability. Countries such as United Kingdom, Canada, Ireland and Hong Kong allow the deduction of such expenses under the general deduction provision in their respective legislation. In Australia, business taxpayers rely on the general deduction provision whilst the individual taxpayer can rely on a specific legislative provision.

The Institute proposes that all expenses incurred for compliance with the various laws and regulatory' requirement such as professional fees incurred on special audits, verification exercises, tax agent's fees, secretarial fees, annual listing fees etc. should be allowed a tax deduction to reflect the business realities - that such expenses are essential in operating a business. This will assist in inculcating a compliant society and enhance corporate governance. Alternatively, it is proposed that compliance expenses be legislated to allow for specific deductions.

B-4 Enhancing carry back of current year losses

Previously, current year losses are not allowed to be carried back to preceding years to reduce the tax liability of a taxpayer.

In an effort to mitigate the impact of the economic contraction resulting from the global meltdown in financial sector on the domestic economy, the Government has in the Second Stimulus Package 2009 allowed a taxpayer to irrevocably elect to carry back its current year business losses of up to RM100,000 to the immediately preceding year of

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assessment to reduce its tax liability for the said year of assessment. However, this incentive is only applicable for the years of assessment 2009 and 2010 and the carry back will only benefit a taxpayer with a current year loss in one year and chargeable income in the immediately preceding year. Due to the numerous conditions for eligibility, the number of taxpayers who will be benefit from the incentive would be limited.

In addition, based on the prevailing corporate tax rates for the years of assessment 2008 and 2009 of 26% and 25%, the maximum potential tax savings a taxpayer could derive from the carry-back losses of up to RM100,000 would only be RM26,000 and RM25,000 respectively.

It is proposed that:-

(i) The cap of current year losses eligible for the carry back be increased from RM100,000 to a higher amount or be determined based on certain percentage of the losses in order for the incentive to be more appealing to the taxpayers;

(ii) The loss carry-back period be extended from one year to at least 3 preceding years;

(iii) The qualifying period for the carry-back loss relief be further extended after the year of assessment 2010 or to retain the said relief as a permanent feature in the Malaysian taxation system.

B-5 Disparity in expectations between budget announcement and implementation

There have been occasions where well conceived Budget proposals are subsequently watered down after the actual rules and regulations were introduced, thereby creating a disparity in expectations between the Budget announcement and its implementation.

For instance, in Budget 2009, it was announced that accelerated capital allowance (ACA) on security control equipment would be given to all business premises. However, the subsequent Income Tax (Accelerated Capital Allowance) (Security Control Equipment and Monitor Equipment) Rules 2008 [P.U.(A) No. 359/2008] stipulate that only buildings of permanent structure used for the purpose of that business by an individual resident in Malaysia, factory and container/cargo lorry installed with Global Positioning System are eligible. The ACA certainly does not apply to all business premises (such as banks, hotels and hypermarkets, etc.).

At times, the relevant regulations and guidelines are not available for a long time, rendering the incentives introduced ineffective.

The Institute's view is that in the long run, such a situation may not enhance the credibility of the policy makers and the public will develop a wait-and-see attitude towards Government announcements. Accordingly, the actual rules and regulations introduced should be in line with the intention of the Budget announcement.

B-6 Accelerated capital allowances (ACA) on information and communication technology (ICT) equipment

The Income Tax (Accelerated Capital Allowance)(Information and Communication Technology Equipment) Rules 2008 [P.U.(A) No. 358/2008] has shortened the 2 year ACA claim to one year. It also introduces a claw-back provision and excludes companies

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enjoying incentives under the Promotion of Investments Act 1986 and reinvestment allowance from claiming the ACA.

Contrary to the intention stated in the 2009 Budget proposal to encourage the private sector to invest in the latest ICT equipment and in line with the development in ICT, the restriction does not take cognizance of the fact that technology advances rapidly. The introduction of the claw-back provision should be reconsidered.

C CREATING A COMPETITIVE INVESTMENT ENVIRONMENT

The Government's commitment to accelerating the liberalisation process has been well received. In line with this, convergence with international norms will help to reduce reliance on a few specific industries, businesses and taxpayers. In pursuing our quest towards a developed nation status, we need to adopt international practices in various sectors. In this respect, the Institute would like to emphasis that the Ministry of Finance should consider aligning the tax treatment of Groups of Companies with international practice.

C-1 Investment holding company

(a) Treatment of non-investment income

Section 60F(1A) of the Income Tax Act 1967 (ITA) provides that income from the holding of investments is treated as a non-business source, whereas other income are treated as gains or profits under Section 4(f). It is uncertain whether indirect expenses are allowable deductions although they are incurred in the production of gross income. If they are deductible, how are they to be computed?

The Institute is of the view that the indirect expenses, excluding the permitted expenses, should be allowed a deduction against the non-investment income.

In addition, a proportion of permitted expenses as determined in accordance with the prescribed formula are allowed as a deduction from the aggregate income of the IHC.

The Institute is of the view that since the maximum permitted expenses deductible against investment income is, generally one-quarter of these expenses, the balance of the permitted expenses should be deductible against non-investment income.

Further, Section 60F should be amended to include tax fees and other similar compliance expenses, EPF and SOCSO contributions as well as bank charges as part of the permitted expenses as these expenses are necessarily incurred in the business of holding investments.

Income from the holding of investments by a listed IHC is deemed as business income. All sources of income have to be treated as separate sources of business income. However, unabsorbed tax losses and capital allowances are not allowed to be carried forward to future years.

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The Institute is of the view that tax law related to IHC should be streamlined. The different tax treatment between listed and unlisted IHC and the restricted application of tax law on tax computation of listed IHC has made the law complicated!

(b) Treatment of investment income

CTIM is of the view that the tax treatment of investment income should be based on the classes of income in accordance with Section 4 of the ITA. All dividend income should be treated as one source of income, as would also be the case of rental and interest income, regardless of whether they are income or non-income producing.

Currently, the IRB has taken the view that rental income is considered as a business source if the maintenance or support services are provided in respect of the property. A company may therefore have some rental income which is treated as business income while others may be regarded as an investment source.

The Institute is of the view that where it is established that a rental source is a business source, all the rental income should be treated as a business source.

C-2 Withholding tax on reimbursements/disbursements

The IRB has held the view that, except for disbursements or reimbursements relating to hotel accommodation, disbursements or reimbursements of out-of-pocket expenses incurred in the course of rendering services to the non-resident are subject to withholding tax. In practice, most taxpayers end up bearing the withholding tax themselves and thus bear the increase in the cost of operations. Strictly, payments of out-of-pocket expenses to non-residents reflect a settlement of debt incurred by the non-residents in connection with the services provided under Section 109B of the ITA and are not payment for such services provided per se.

The Institute would like to stress that withholding tax should not be imposed on ALL reimbursements/ disbursements as these are incidental costs for providing the service rather than fees/income earned from the services provided. Reimbursements/disbursements are not consideration for services rendered.

C-3 Convergence of tax practice with the International Financial Reporting Standards

The Malaysian Accounting Standards Board (MASB) has committed to fully converge with the International Financial Reporting Standards (FRS) by 1 January 2012.

In principle, the FRS is moving from the historical costs accounting towards fair value accounting. On the other hand, assessment of taxation is still based on historical costs. This has created a great divergence between accounting and tax treatment. In view of the above, the Institute, together with the Malaysian Institute of Accountants and the Malaysian Institute of Certified Public Accountants, has set up a Joint Tax Working Group on FRS (JTWG-FRS) to study the tax implications on the implementation of FRS and

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recommended the appropriate tax treatment. A study on 8 FRSs has been completed and the relevant Discussion Papers have been submitted to the authorities on 27 January 2010.

The Institute suggests that as a guiding principle, where the difference between the accounting treatment of an item/transaction under FRS and the tax treatment is a matter of timing difference, the tax treatment shall converge with the accounting treatment to reduce the cost of doing business and increase in tax administration efficiency.

C-4 Group of companies

To facilitate multinational operations, it is of national interest to align local revenue practices with the international norms on group companies. Such practices will also facilitate the growth of local conglomerates, thereby strengthening our economic position.

(a) Interest free loans among group of companies

The IRB has recently imputed interest income on all interest- free loans provided by a company to its related companies within the group. This is a departure from the past practice of accepting interest-free loans as a common way of doing business by groups of companies. The impact on the local groups of companies is significant as many of them have intra-group interest-free loans or advances. This has increased the costs of doing business as it alters the optimal financial structure of the local groups of companies. There may be genuine commercial reasons for not charging interest on loans or advances particularly among companies within a group.

The Institute suggests that since this is a departure from past practice, an administrative concession should be granted to allow companies a transitional period to rearrange their financial structure. The Institute suggests that the new practice be applied to all new loans/advances made or entered into from 1 January 2011.

To remove the undue burden to domestic companies (which are covered by section 140 of the ITA), the Institute proposes that section 140A be applicable only to loans/advances given to or taken from foreign companies.

[Note: Under FRS 139 interest income/expense is imputed on loans/advances given to or taken from companies within public listed companies. The issue is whether the interest income/expense imputed for accounting purposes is taxable or deductible for tax purposes.]

(b) Interest expense subjected to Section 140A adjustments

Many countries which have implemented thin capitalisation rules do not have an interest restriction provision like that available in Malaysia. Section 33(2) interest restriction, when taken together with the thin capitalisation rules under Section 140A, can lead to a double restriction on the deductibility of interest. Double restriction of interest expense as a deduction may have a negative impact on the competitiveness of Malaysia in attracting direct foreign investments.

The Institute suggests that where interest-free advances given are imputed

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with interest income, such balances should not be included for computing interest restriction again, otherwise the company giving the advances will be restricted on the interest expense as a business deduction and at the same time taxed on interest income not actually received. The treatment of compensating adjustments under Section 140A should also be clearly spelt out.

The Institute suggests that the Section 33(2) interest restriction provision be removed. Otherwise, some mechanism should be introduced to avoid the double disallowance. For the purposes of clarity, the Public Ruling should clearly set out examples to show how the two provisions will apply. Clear examples should be given to illustrate the application of the rules under various scenarios.

(c) Group relief

(i) Restriction on eligibility

A company may surrender not more than 70% of its adjusted loss in the basis period for a year of assessment to one or more related companies resident and incorporated in Malaysia.

The shareholding of the claimant and surrendering companies in the group, whether direct or indirect, must not be less than 70%.

Group relief should be given to companies that fall under the definition of related companies as provided under the Companies Act, 1965 and the restriction of a 70% shareholding should be removed.

The losses to be surrendered should be restricted only by the aggregate income of the claimant company (and not limited to only 70% being surrendered).

(ii) Payment in consideration for losses surrendered

A claimant company may pay a sum of money to the surrendering company in consideration for the amount of losses surrendered. This would be good corporate governance where there are minority shareholders in the claimant or surrendering company. However, there is no legislation on the tax treatment of such a payment.

Payments received in consideration of losses surrendered should not be taxable on the surrendering company and similarly payments made should not be allowable on the claimant company as the amount represents a capital payment. This treatment is consistent with the UK legislation.

(iii) Unabsorbed capital allowances

Most of the time, companies incurring losses would also have unutilised capital allowances.

Unutilised capital allowances of one company should be allowed to be transferred to another company within the same group (which is similar to

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the current group relief provisions in respect of losses). The proposal would assist group of companies to achieve better tax efficiency.

(iv) Extension of group relief to small and medium enterprises ("SMEs")

The Finance Act 2009 has excluded many companies within a group of companies from enjoying a preferential tax rate under Schedule 1, Paragraph 2A of the ITA.

Prior to year of assessment 2009, a small and medium enterprise was defined as a company resident in Malaysia with a paid-up capital comprising of ordinary share capital of RM2.5 million or less. SMEs enjoyed the preferential income tax rate of 20% on the first RM500,000 of the chargeable income and the balance of the chargeable income at the tax rate applicable for the relevant year of assessment.

With effect from year of assessment 2009, the definition of a SME in Schedule 1, Paragraph 2B of the ITA has been revised to exclude companies which are more than 50% owned (directly or indirectly) by non-SMEs whether incorporated in Malaysia or outside Malaysia. Consequently, this group of companies will no longer enjoy the preferential tax rate of 20% on the first RM500,000 of chargeable income and this would result in an increase in their tax liabilities.

Under Section 44A of the ITA which provides for group relief, among others, both the claimant and the surrendering companies must have a paid-up ordinary share capital of more than RM2.5 million at the beginning of the basis period for a year of assessment to be eligible for group relief. The surrendering company is allowed to surrender up to 70% of its adjusted loss in a year of assessment to the claimant company for the purpose of the group relief effective from year of assessment 2009.

Based on the foregoing, companies with paid-up ordinary share capital of RM 2.5 million or less are not eligible to claim or surrender tax losses. In addition, such companies which are owned by a related non-SME within a group of companies would not benefit from the preferential tax rate for SMEs, which is disadvantageous in terms of cash flow and competitiveness.

Section 44A(2)(ii) of the ITA should be amended to allow a claimant company to claim group relief although its paid-up share capital in respect of ordinary shares is RM2.5 million or less at the beginning of the basis period for that year of assessment.

(d) Scope of controlled transfer

With regard to cross-border controlled transfers of assets, the IRB appears to hold the view that the control transfer provisions under Schedule 3 of the ITA are not applicable although in the case of ***SEOD S.A. vs LHDN,*** both the Special Commissioners and the High Court decided that there is no requirement under the ITA for the acquirer of the assets to be a Malaysian resident for a control transfer provisions to apply.

Instead of applying the principle that has been established by the Courts, the approach commonly adopted by the IRB is that the principles established in the decided case cannot apply to any other taxpayer if the facts and circumstances are not the same.

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It is proposed that the control transfer provisions under Paragraphs 38-40, Schedule 3 of the ITA be clarified so as to avoid ambiguity.

The decision of the Courts should be respected and applied and not restricted in its application.

D STRENGTHENING GROWTH IN THE SERVICES SECTOR

It is the consensus that "low skills" jobs command low wages. The NEAC Report highlights that today 80% of the workforce have an educational level only up to SPM. This falls short of the high income economy that we aspire to be. To transform Malaysia into a high-income economy, there must be a pool of skilled labour and a substantial number of skilled jobs available. Hence, strengthening the development of the services sector is the key to achieving the objective.

Capacity development therefore is a pre-requisite and this involves the development of the local market for services and human capital, which in turn is tied to our educational policy and measures. We need continuous education, on-the-job training and re-skilling to benefit from advancement in knowledge and new technology. In this respect, it is critical to review the relevance of ethnic-based policy.

Globalisation has created a fierce competition for talent. As disclosed in the NEM Part I, the rate of outward migration of skilled Malaysians is rising rapidly, while the number of expatriates working in the country has been steadily declining. To reverse the brain drain position, CTIM fully agrees with the NEAC suggestion that Malaysian must be seen by its people and by others as a land of equal opportunity to earn a good living and provide a secure, happy life for each individual and the family. By building a highly skilled workforce, where productivity and competitiveness drive growth, the cost of doing business will be competitive and Malaysia will be able to build an innovative economy. We could use the geographical location and cultural diversity to position our country as an alternative capacity development centre for the emerging economies.

However, care should be taken to assess both the demand and supply sides of the knowledge economy as well as the fact that a sizeable number of our professionals are working overseas. The retention of such skills may be difficult. Nevertheless, there is a need to look into ways of ensuring that the country's need for such skills is met. Nevertheless, all is not lost if the true spirit of 1Malaysia succeeds as these migrated skilled Malaysians will bring new opportunities to Malaysia.

CTIM is of the view that Malaysia should be more market-oriented and it would be less costly for the Government to provide a suitable infrastructure for the knowledge sectors to flourish. The proposals are aimed at widening the recognition of professional services and promoting the development of professional services. Malaysia also has the potential to develop into a regional education hub. Other proposals are designed to attract foreign talent and encourage the free flow of skilled labour.

D-1 Widening the recognition of professional services

Currently, only certain services, the professional status of which have been determined by way of Malaysian statutes/legislation are recognised as professional services. However, it is noted that:

(i) "New" services have "emerged" without relevant statutory regulation and recognition, including services provided by foreigners (who have not been prevented from

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providing services due to the lack of regulations).

(ii) Incentives for the services sector are enjoyed by a few sub-sectors which have been "recognised" by way of statutory order.

(iii) With the move towards liberalisation of the services sector, the definition / meaning of "professional services" deserves a re-look to extend the scope so that measures taken to promote development in the services sector and in developing human capital can be more effective. This is to be in line with the definition adopted in the Framework on Mutual Recognition Arrangements.

If statutory recognition is required to accord professional status, the Institute suggests that in view of the time constraint to liberalise trade and services, it is suggested that a legislation be enacted to set up an umbrella body that controls/regulates the activities of the various services, etc, including the traditional professional groups. The umbrella body will determine the entry qualification and other characteristics of a professional body. All members of the umbrella body offering professional services will then be accorded a professional status and therefore be eligible for any incentive applicable to professional bodies. This will bring about regulation of the services sector.

D-2 Restriction on recognition of professional courses

Fees expended for any course of study up to tertiary level undertaken for the purpose of acquiring law, accounting, Islamic financing, technical, vocational, industrial, scientific or technological skills or qualifications in any institution or professional body in Malaysia recognised by the Government or approved by the Minister, is allowed under S. 46(1) (f) of the Income Tax Act 1967 ("ITA") as a relief subject to a maximum of RM5,000.

However, the list of local professional institutions recognised by the Government comprise of only 10 professional bodies. This is not sufficient to promote the services sector in general.

In line with the promotion of a knowledge-based economy, individuals should be encouraged to pursue more diverse courses of interest and be allowed deductions (as reliefs) for expenses incurred. More "highly equipped" individuals generally command a higher remuneration.

By allowing a deduction (in the form of a relief) for educational expenses incurred in pursuing a course/ professional examination taken from a local educational/professional institution, unless such a course/professional examination is not available locally, the measure will assist in establishing and strengthening the local demand for our educational industry. It will also encourage and support the policy of lifelong learning.

Following the expansion of the scope of professionals as proposed in (1) above, the local professional institutions recognised in the list should be increased accordingly.

D-3 Deduction for continuing professional education (CPE) course fees

To maintain and ensure the quality of continual professional development of members with regard to their professional skills, competence and values in providing services, professional bodies impose on its members a requirement to complete a stipulated number of CPE hours within a specific time frame. This would have the effect of capacity building on both the educational sector and the relevant professional sector.

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In connection with the personal income tax of tax practitioners and tax professionals, it is proposed that the costs incurred by individuals in attending CPE courses be deductible against their employment/business income.

D-4 Promotion and recognition of the contribution of professional bodies

A professional body should not be taxed as a trade association because it is a non-profit making body, whose primary objective is to advance the interests of the profession rather than the members. It assists the development of the profession, and hence the standard of services, by providing training and discipline to its members. The income from conducting Continuing Professional Education (CPE) courses/seminars/workshops etc is for the advancement of the profession and it will be ploughed back by the professional bodies to support research, conduct surveys, publish journals, provide education, and for general administration.

CTIM proposes that

(i) Professional bodies be taxed as "mutual clubs".

(ii) The income from conducting Continuing Professional Education (CPE) courses/seminars/workshops etc be exempt from income tax because this is mainly from members. The income from outsiders is incidental in nature.

D-5 Tax treatment of premium and proceeds from professional indemnity insurance (PII)

Service providers need to take up professional indemnity insurance to cover their business risks just like a manufacturers taking product liability insurance. In fact, it is a standard membership requirement for established professional bodies. The purpose is the protection of the consumers.

a) The IRB has taken the view that PII is a policy taken to protect the personal assets of the insured against personal liability or risk and thus is not an expense wholly and exclusively incurred in the production of income. Only members of professions whose professional status is legislated into Malaysian law are allowed to deduct premium on PII.

b) Where a professional stands in for another professional, or is acting as a temporary consultant, he is expected to take the full responsibility for the service he renders. There is no master- servant relationship between him and the person he stands in for.

c) The current stand of the IRB based on the Public Ruling is that proceeds received from the PII are taxable but the amount paid out to the claimant is not deductible. Such a stand, in effect, negates the purpose for taking up a PII. Imagine, if a tax practitioner is being sued for RM1 million, and the PII covers the full payment (in practice it may be less than that), the individual will have to pay tax of RM260,000 (tax of 26% on the proceeds) and yet the premium paid is not deductible.

In view of the firm stand taken by IRB vide the Public Ruling, it is hoped that the MOF could consider a change in the law to give justice to the matter. The Institute proposes as follows:

(i) All professional service providers be allowed to claim a tax deduction on

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premium paid on PII to a local insurer. This will allow them to hedge their business risks and promote the services sector. At the same time, this will facilitate the growth of local insurance industry.

(ii) Income of a professional from the stand-in duties, including that of a locum, be treated as business income from carrying out his profession and the premium on PII be allowed as a deduction against such income.

(iii) Proceeds from PII be taxable and the payment (out of the proceeds received) to the claimant be deductible.

D-6 Stamp duty on service agreements (all service contracts)

Currently, stamp duty is levied on service agreements at ad valorem rates. This has burdened the services sectors and made it not as competitive as compared with our neighbouring countries.

In addition, it appears there is an extension on the interpretation of item 22 of the Stamp Act which the IRB has interpreted to include royalty, etc. and will be subject to ad valorem of 0.5% of the amount.

To reduce the cost of operations for the services sector, the Institute suggests that stamp duty at a flat rate of RM50 be levied on service agreements executed.

D-7 Double deduction for approved training

Double deduction is given for training conducted by approved institutions. There are only a few approved training institutions and the courses offered are limited. Currently, expenses on in-house training will need to obtain approval before being eligible for a double deduction.

The Institutes proposes that double deductions be extended to cover

i) all resident service providers;

ii) a wider variety of courses including education and training programmes conducted by professional bodies which lead to the attainment of a professional qualification.

iii) more approved training institutions, including professional bodies.

D-8 Incentives for service providers

(a) Acquisition of foreign owned companies

Under the Income Tax (Deduction for Cost on Acquisition of a Foreign Owned Company) Rules 2003, a locally owned company involved in manufacturing, trading or marketing activities of local products, is eligible for a deduction in arriving at its adjusted income from a business equivalent to 20% of the cost of acquisition of a foreign owned company in the year of assessment in which the cost is incurred and the following four years of assessment.

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"Acquisition of foreign owned company" means acquisition of a foreign owned company located outside Malaysia for the purpose of acquiring high technology for production within the country or for acquiring new export markets for local products as approved by the Malaysian Industrial Development Authority (MIDA). The incentive expired on 31 December 2008.

To promote the services sector, the incentive should be extended indefinitely and should be modified to include companies in the services sector, such as banking, finance, insurance, stock broking, telecommunications, professional services, construction, outsourcing industries, etc. This can be justified by the services sector being the engine of growth in recent years. This will encourage the Malaysian service providers to participate in providing services to foreign markets and promote Malaysia as the centre of excellence in providing these services to the ASEAN region and Asia as a whole.

(b) Promotion of health tourism

The healthcare industry requires heavy investment in

(i) Healthcare and medical training

(ii) Specialised and advanced medical equipment

(iii) Obtaining accreditation of health institution/organisation and health programmes.

To facilitate the growth of health tourism, the Institute proposes that the following be considered to alleviate the heavy capital outlay:

(i) double deduction on expenses incurred on

- **specialised training of medical personnel;**
- **obtaining accreditation of health institutions/organisations and health programmes;**
- **promotion of wellness programmes offered to the public for free or at subsidised rates;**

(ii) accelerated capital allowances for expenditure incurred on acquiring advanced medical equipment;

(iii) reinvestment allowance for investment in equipment used in high end and niche services.

(c) Acquisition of proprietary rights

Pursuant to *the Income Tax (Deduction for Cost of Acquisition of Proprietary Rights) Rules 2002*, among others, the cost of acquisition of proprietary rights such as patents, industrial designs and trademarks may be claimed over five years of assessment by a manufacturing company which has incurred the same or by the manufacturing company's subsidiary if the proprietary rights are transferred to the latter.

However, the Government has not introduced any incentive to encourage the acquisition of intellectual property in the non-manufacturing sectors. The restriction on eligibility for the incentive to only the manufacturing company is not aligned to the country's current economic objective, i.e. transitioning to the service and knowledge economy.

The incentive be extended to all companies, in particular service providers, to encourage these companies to acquire new technologies and intellectual properties to evolve into innovation-driven and knowledge-based companies.

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D-9 Removal of individual tax residence status for specific services sector

One of the conditions for an individual to qualify for residence status for purposes of income tax is that the individual is required to be in Malaysia for at least 182 days in a basis year.

To attract foreign experts and talents into Malaysia, thereby building the services sector, the distinction between residents and non-residents be removed for specific service.

D-10 Review of individual income tax rates

Developed nations have sophisticated infrastructure and facilities to retain skilled labour. Malaysia may look into the alternative of providing low rates of individual tax to attract and retain skilled labour. Currently, Malaysian individual tax rates are not competitive. Further the marginal tax rate for individuals is not streamlined with the corporate tax rate.

The Institute suggests that the Government review the tax brackets for individuals with the objective of having larger income bands and aligning these to the corporate tax rates so as to improve its competitiveness and to ease the financial burden of individuals. This will also facilitate the capital accumulation for local entrepreneurs and facilitate the establishment of SMEs.

E FACILITATING DEVELOPMENTS OF LOCAL INDUSTRIES

To enhance the stability of our economy, measures must be taken to stimulate the key sectors of our economy. Policies should be oriented on productivity-enhancing reforms to support growth beyond short term. In line with the Government's effort to revitalise the property sector, the Institute has proposed some fiscal measures with the objective of stimulating property transactions, harmonising the tax treatment and lowering the cost of doing business in Malaysia. The Government has been promoting tourism. However, CTIM is of the view that the full potential of eco-tourism and health tourism have not been exploited.

E-1 Strengthening growth in local property sector

The construction industry has been an important sector for economic growth. In this respect, the Institute proposes the following measures to revitalise the industry for the consideration of the Ministry.

(a) Assessment on owners/purchasers

(i) Carry forward of unabsorbed rental loss

Currently, losses from a rental source are not allowed to be carried forward to be set-off against future rental income. A rental loss may occur during the initial stage or during a change of tenancy where the landlord is looking for a tenant or a replacement tenant.

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This would make investment in property very unattractive as the landlord has to incur maintenance expenses to keep the premises in rentable conditions during the period, the expenses incurred could be large and the vacant period could be long. Further, for practical reasons, repairs and major maintenance work are generally performed prior to the commencement of a new tenancy. The landlord would not be able to claim such repair expenses in full since there may be insufficient rental income.

To encourage investment in property, the rental losses be allowed to be carried forward for set off against future income from rental source.

(ii) Assessment on income from letting of real property

Unlike the quantitative and qualitative criteria as adopted in the Public Ruling No.1-2004, income from the letting of real property can only be treated as a business source if the owner has actively provided maintenance services, support services or ancillary facilities to the tenant, i.e. irrespective of the number and types of property one has invested in.

The Institute is of the view that the policy does not recognise the reality of business. Businessmen enter into a business or trade to maximise returns. In the case of the property letting business, it is the potential return in the form of rental income that can be generated from the real property that determines whether a property should be acquired. In the course of selecting real properties to invest or to lease, one may end up deriving income from properties which do not meet the test as a business source. For example, in Malaysia, shop houses are commonly maintained by tenants who may also renovate the premises to suit their requirements. The policy does not enhance growth in the property sector.

- Since most of the high-rise buildings such as shopping mall, office building, condominium and apartments are maintained by management companies, and many of the management companies are not owners, therefore rental income derived from these properties will generally be treated as non-business source. The owners do not have a choice to provide maintenance services.
- The investors will be burdened by differentiating property in terms of which is a business source and which is a rental source for tax purposes. This can be an administrative burden. Separate accounts will have to be maintained to reflect separately the income and expenses relating to the business and non-business sources. For example, an owner may have a row of shop houses, say, 10 units of 3-storey shop houses for letting. Maintenance services, support services or ancillary facilities are offered to prospective tenants. All the units are let out but only some of the tenants have engaged the owner to provide these services. The situation may be further complicated where due to changes in tenants for some of the units, the maintenance services for some of the properties are provided for some of the months rather than the whole year.

The quantitative and qualitative criteria as adopted in the Public Ruling No.1-2004 should be restored for determination of income from the letting of real property as a business source. Alternatively, if the properties of a person are managed and maintenance services, support services or ancillary facilities are provided in a systematic or organised manner, the person should be regarded as carrying on a business of letting real properties and all the rental income derived should be treated as a business source.

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In addition, once it is established that the principal activity of a person is that of carrying on the business of letting, then all the properties of the person should be considered to be part of the business source.

(iii) Building allowances on non-industrial buildings

Currently, only buildings used in specific sectors qualify for industrial building allowances. There is no allowance accorded to capital expenditure incurred on commercial buildings, office complexes, private medical clinics, private dental clinics, other healthcare facilities, etc.

Alteration or renovation of business premises is often necessary to make it suitable for business operations. Under the second economic stimulus package introduced on 10 March 2009, renovation or refurbishment expenditure incurred on premises between 10 March 2009 and 31 December 2010 will be given accelerated capital allowance of 50% with effect from the year of assessment 2009, subject to a maximum of RM100,000. Commercial buildings are recognised as industrial buildings in Hong Kong. In comparison, in Malaysia, the motor racing circuit in Sepang, and hotels are deemed as industrial buildings.

Under *FRS 116: Property, Plant and Equipment*, buildings have a limited useful life and are depreciable assets. To simplify our tax system and to be in line with convergence with FRS, the Institute proposes that:

- **The scope of Schedule 3 Paragraph 63 of the ITA be extended so that building allowances are given to capital expenditure expended on or after 1 Jan 2010, on all buildings which are used solely for the purposes of a business.**
- **The eligibility to claim building allowances be extended to the owners or lessors of non-industrial buildings.**
- **Building allowances be allowed on expenditure on renovation and alteration of all business premises incurred on or after 1 January 2011 without any limit on the amount of capital expenditure incurred.**

(iv) Loan interest incurred on acquisition/construction of premises prior to commencement of business

Currently, the IRB does not allow a deduction on interest expenses incurred on the construction of a factory or plant prior to commencement of business. Such interest expenses are also not eligible for capital allowances on the basis that interest expenses do not constitute a cost of construction.

To facilitate the acquisition/construction of properties and to encourage ownership of business premises, interest expenses incurred prior to the commencement of a business should be allowed as part of the building expenditure qualifying for building allowances.

(v) Stamp duty exemption on loan agreements for residential properties

To promote home ownership by Malaysians, a 50% stamp duty remission currently given on loan agreements executed for the purchase of residential properties not exceeding RM250,000 be extended to properties not exceeding RM400,000. (i.e. an

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increase in the threshold). This will reduce the cost of home ownership despite an increase in property prices.

(b) Streamlining the tax treatment of property developers

(i) Reducing compliance costs

The adoption of IFRIC 15 "*Agreements for the Construction of Real Estate"* by subsidiaries and affiliates of public listed companies in Malaysia, with effect from 1 July 2010 brings about the need to maintain additional records for the purpose of ascertaining the gross income e from property development projects for income tax purposes.

The income recognition for tax purposes should be in line with the accounting method of income recognition so as to reduce compliance costs of Malaysian property development companies which adopted iFRIC 15.

The scope of the Income Tax (Property Development) Regulations 2007 should be aligned with of FRS 111; i.e. the Regulations would only be applicable to "construction contracts" which fall within the ambit of FRS 111.

It is proposed that the IRB accepts for tax purposes the commencement of recognition of income when a development project has reached a certain stage of completion for accounting purposes so long as the stage of completion adopted by the developer is reasonable and is acceptable for accounting purposes.

The amount of liquidated ascertained damages provided in the accounts is to be deductible for tax purposes provided the amount is calculated on a project by project basis using the percentage prescribed in the sale and purchase agreement with purchasers.

Guarantee fees incurred loans/facilities for a property development projects satisfy the deductibility test under Section 33(1) of the ITA. However, the IRB has taken the position that guarantee fees are not deductible for tax purposes. Hence, it is proposed that a deduction be allowed based on the percentage of completion of a development project.

(ii) Preparation of final accounts

Under the Income Tax (Property Development) Regulations 2007, a development project or phase is deemed completed upon either the date on which the Temporary Certificate of Fitness for Occupation ("TCFO") or the date on which the Certificate of Fitness for Occupation ("CFO") is issued. The property developer must then determine the actual profit for the project and prepare the final accounts up to that date.

The requirement to prepare the final accounts on the date of the TCFO or CFO does not take into consideration many other costs incurred after the issuance of the TCFO/CFO, particularly for large development projects. For township developments, the finalisation of accounts would depend on a number of factors such as changes in regulatory requirements, Government specifications needed for infrastructure facilities like road widths and drain sizes, cost variations in the components of infrastructure costs and land related costs. Therefore, the actual profit for the development project is normally determined upon finalisation of billings issued by contractors and/or subcontractors, and this can take place many months or years after the handing over of the vacant possession

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of developed units to purchasers.

It is proposed that the date of completion be set at 18 months from the date of delivery of vacant possession, which is in line with the Housing Development Act requirements on defects liability period. Alternatively, a reasonable period may be set at 12 months after the issuance of the TCFO or CFO.

(iii) Allocation of land costs

Under the Income Tax (Property Development) Regulations 2007, the Director General may allow a property developer to apply a formula for the purpose of ascertaining the estimated gross profit in accordance with the accounting standard or practice applicable during the basis period that relates to the project as long as the developer ensures that it uses fair and reasonable estimates as required.

In this regard, a common method adopted by most major township developers in Malaysia is where the land costs are allocated based on the gross development value ("GDV") of the project which is in accordance with the Malaysian accounting standards. However, this is not acceptable by the IRB. The Public Ruling No. 1/2009 on Property Development prescribes that land costs be allocated between the various projects based on acreage. Such a basis of allocation disregards the fact that land value varies depending on the location of the project and the development that takes place in the surrounding areas.

It is proposed that property developers be allowed to adopt any method of allocation of land costs as long as the method adopted is applied consistently and the method used is in accordance with the accounting standards and practices prevailing at that time.

(c) Real Property Gains Tax

(i) Property development companies being deemed real property companies (RPCs)

The Real Property Gains Tax Act 1976 (Act 169) ("RPGTA") was introduced to curb speculative activities of properties. The provisions on real property companies were introduced on 21 October 1988 as an anti-avoidance measure to the RPGTA.

In the Binastra Holdings case, the IRB has taken the position that a company is considered a RPC even if the company holds land as stock-in-trade, and the Court of Appeal ruled in favour of the IRB recently. Although the exact grounds of the judgement are not known, suffice it to say that the case will have far reaching implications, not just on the property developers but on the business community in the country as a whole.

The decision is inconsistent with the original intention of the RPC provisions. It affects all companies which hold substantial real properties whether they are held as fixed assets or as stock-in-trade, as they are deemed to be real property speculators.

The original intention of introducing the RPGTA should not be compromised. It seems illogical and inequitable for a company to be subject to income tax on gains on disposal of real property which forms part of its stock-in-trade, and yet at the same time be subject to RPGT on the gain on sale of its shares.

Now that the case has been decided, a reasonable inference is that the law has

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been improperly drafted and may need to be amended. Perhaps, it should be clear that only real properties not forming part of stock-in-trade and shares of real property companies should be taken into account for the purpose of determining whether a company is an RPC.

The Institute suggests that property developers and companies which hold real properties to generate business income (eg. plantation companies, real property investment trusts, hotel owners and companies in the business of letting of real properties, etc.) be excluded from falling within the ambit of RPCs.

Rationale- The gains on the disposal of real properties which form part of stock-in-trade would have already been subjected to income tax. Further, it will encourage investment activities as a whole as the capital gain on disposal of shares of RPCs will not be subjected to RPGT.

(ii) Cost of financing acquisition of real property

With the recent amendment, the interest costs incurred for the acquisition of real property are no longer allowed as a deduction in arriving at the chargeable gain upon disposal.

The Institute suggests that interest expenses paid to finance the acquisition of real properties be reinstated as part of the incidental cost of the acquisition price for computing RPGT. This is because in reality, the increase in value of properties is partly due to the interest costs in acquiring the properties.

E-2 Promoting Automobile Industry

(a) Tax treatment of cars used for demonstration by motor vehicle retailers

Currently, as a general practice in the automobile industry, motor vehicles used by the retailers as demonstration cars for customer test-drive purposes are treated as stock-in-trade in their books and tax deductions are claimed on the diminution in value of the said vehicles for the relevant years of assessment pursuant to Section 35(2) of the ITA..

The IRB generally deems the demonstration cars as fixed assets of the retailers and treat the diminution in stock value as depreciation thereby disallowing a claim for such expenses for tax purposes.

As the demonstration cars are essentially stock-in-trade of the car retailers, i.e. they will be sold whenever there is a demand, the accounting treatment of demonstration cars as stock-in-trade should be accepted by the IRB and the Public Ruling 4/2006 on Valuation of Stock-in-Trade and Work-In-Progress – Part 1 should be amended to specifically allow a tax deduction on the diminution in value of demonstration cars by the motor vehicle retailers pursuant to Section 35(2) of the ITA. Alternatively, the cap on qualifying capital expenditure and the claw back on disposals within 2 years should be withdrawn.

(b) Review Of Excise Duty On Motor Vehicles

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With the implementation of the Asean Free Trade Area (AFTA), Malaysia has correspondingly reduced the import duties on all types and variants of vehicles imported from the ASEAN countries to 5% to be in line with the spirit of regionalisation under the AFTA agreement. However, the excise duties applicable on motor vehicles still remain high at the rates ranging from 60% to 105% (depending on the engine capacity), which makes the motorcar prices in Malaysia one of the highest in the world.

As an initiative to reduce the carbon footprint by encouraging the Rakyat to replace their existing aging cars with brand new cars with lower carbon dioxide emission, it is proposed that the current excise duty rates on motor vehicles be reduced.

E-3 Capital allowances and rental claims on private motor vehicles

Currently, the limit of capital allowances and rental claims on the private motor vehicles is RM100,000 for each vehicle provided that the cost of the vehicle does not exceed RM150,000. If the cost is more than RM150,000, the limit is RM50,000.

It is proposed that the limit on qualifying expenditure for capital allowances and lease rental claims on private motor vehicles be removed.

Alternatively, the cap should be increased to reflect the current economic environment. It may be considered based on its cylinder capacity. For example, motor vehicles with cylinder capacity not exceeding 2,000 cc should have no restriction on the amount capital allowances claimed while those with cylinder capacity greater than 2,000 cc could have a limit on the amount of capital allowances claimed.

E-4 Small and medium size enterprises (SME)

(a) Confusion over the definition of "SME"

There is a different definition for SME used by the Small and Medium Industries Development Corporation (SMIDEC) and Bank Negara Malaysia (BNM) for the purpose of granting financial assistance.

The difference in definition causes confusion to the businessmen, for example, when they are eligible for the SME financing package but are not qualified for the SME tax incentive due to the structure of their paid-up capital. The definition of "SME" should be streamlined to reduce unnecessary misunderstanding and confusion as this will hinder the efforts to strengthen the SME sector in our economy.

(b) Restriction on assets acquired under hire-purchase arrangement

The Income Tax (ACA) (Plant and Machinery) Rules 2008 [P.U. (A) No. 357/2008] stipulates that only the capital portion of a hire-purchase asset incurred during the effective period of the Rules will be considered as qualifying expenditure. This is not consistent with the objective of the incentive i.e. to give financial assistance to the SME. The longer term of hire-purchase reflects the stronger need for financial assistance. Rule 3, when read together with Rule 2(c) may be interpreted as hire-purchase assets acquired in prior years but whose payment term stretches over YAs 2009 and 2010 would be

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allowed to claim the ACA on capital expenditure incurred on the assets during YAs 2009 and 2010. Such a practice will also complicate the calculation of balancing allowances/charges on disposal as the claim for allowances are at different rates for different YAs.

The full capital expenditure of the assets acquired in YAs 2009 and 2010 should qualify for the ACA. For assets acquired under hire-purchase in YA 2009 and/or 2010, capital expenditure incurred after YA 2010 should be eligible for ACA when it is incurred.

E-5 Promoting franchising industry

The Government has been promoting franchising to the local small and medium-sized entrepreneur in the past. Currently there is no specific tax benefit or tax break for franchisees to lower their overall cost of investment.

It is proposed that the lump sum payment of the franchise fee by the franchisee should be allowed a tax deduction over a 5 year period, similar to the deduction for cost of acquisition of proprietary rights which is available to the manufacturing sector.

E-6 E-Commerce

With rapid globalisation in the business world, transactions being carried out electronically are inevitable. Currently, there are no specific provisions in the ITA that deal with transactions conducted electronically. Taxpayers are uncertain of the tax treatment relating to e-commerce transactions – the basis of taxation, impact of double tax treaties, withholding tax implications on payments for internet services, software payments, etc.

Specific provisions/guidelines need to be introduced as soon as possible to provide clarity in order to maintain a competitive business environment.

F Enhancing the efficiency of tax administration

The Strategic Reform Initiative No. 4 requires re-engineering of the public sector to be more responsive and accountable to the needs of private individuals and businesses. We must develop a more consultative approach to engage our main stakeholders in the various fields. Through such a process, we can then broaden our viewpoints, challenge conventional wisdom and build a transparent and open consensus for the right way forward.

To improve the tax efficiency, the Institute has proposed some proposals with the objectives to improve transparency, simplicity and clarity of our tax system. The reduction of the marginal tax rates for individuals will be a significant step in attracting the high income group and talented individuals to reside in Malaysia, thereby strengthening Malaysia's position as a services hub.

F-1 Appeals

Currently, the IRB and the taxpayer may appeal on a question of law against the decision of the Special Commissioners of Income Tax (SCIT) to the High Court. Further appeals

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may be made to the higher courts, subject to the provisions of the Courts of Judicature Act 1964. There are some limitations in allowing an appeal to be heard beyond the Court of Appeal.

To improve the appeal process, it is proposed that :-

(a) The Courts of Judicature Act should be amended to allow cases first heard by the SCIT to be eventually heard at the Federal Court.

(b) The time frame for disposal of appeals by the DGIR should be reviewed. (Currently, a maximum period of 18 months is too long and does not motivate efficient handling of appeals).

(c) An AAT should be set up to hear appeals by taxpayers aggrieved by decisions of an administrative nature including the imposition of penalties.

(d) An avenue be provided for appeals against penalties which are imposed through the exercise of the discretionary powers of the DGIR. This could be through the AAT stated above.

(e) Since all SCIT cases are decided by a panel (of 3 Commissioners), all of whom are persons with expertise in tax law, it is therefore appropriate that appeals against the SCIT decisions be reviewed by a panel of judges also. CTIM therefore suggests that the status of SCIT be elevated to be equivalent to that of the High Court and any further appeals be made to the Court of Appeal, which is also sat by a panel of judges.

F-2 Simplifying of tax system

(a) Consolidation of personal reliefs

At present, there are various reliefs for which that an individual is eligible. In most cases, the amount of relief is small and the costs incurred to monitor, report and assess the reliefs do not commensurate with the amount of relief claimed. In determining the eligibility for such reliefs, confusion may arise leading to errors and potential over-claiming of such reliefs. It also complicates the filing of tax returns.

Personal reliefs should be consolidated into a few broad categories (for example, single individual and married individual) and the total amount of personal relief is automatically granted to the taxpayer. This will simplify the completion of tax returns and reduce errors and potential overclaims.

(b) Review of current personal reliefs

In view of the rising costs, it is time that the Government adjusts the relief available with regard to costs of maintaining a child, costs of education and healthcare maintenance. Besides, there is no relief for supporting parent(s) except for relief for medical expenses for parents.

Child relief be increased from RM1,000 to RM2,400 per child for a year of assessment.

In view of the rising costs of education and healthcare maintenance, relief for educational and medical insurance should be increased. This will enhance long term investment in human capital and health, thereby partially relieving the Government from maintenance costs. It will also promote the insurance industry and support the long term development of education and health services.

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To further enhance family ties and promote a caring society, the Government should recognise taxpayers' efforts in supporting their aged parents by granting *parent relief* and further relief for handicapped parents, provided that they actually support their parents. This will extend the social net and reduce the Government's costs in maintaining the aged citizens.

(c) Restructuring of Employer's and Employee's Returns

(i) Due date for EA Form

Section 83(1A) of the ITA stipulates that every employer must render to his employee a statement of his remuneration in the immediately preceding year (Form EA) on or before 28 February. There are a lot of festive holidays in the beginning of the year. Further, employers may be waiting for the year-end financial statements to be finalised before deciding whether bonus should be paid.

The due date for completion of Form EA should be amended to 15th of March to allow more time for employers to compile details to complete the forms as there is a requirement to include details for tax exempt benefits.

(ii) Disclosure of exempt benefits

Currently the information required for Form E and Form EA are too onerous and administratively burdensome. Valuation of various categories of benefits-in-kind and perquisites are subject to different methods of determination.

The E-returns and the treatment of perquisites and benefits-in-kind should be simplified so that an employee whose remuneration had been subjected to the Monthly Tax Deductions (MTD) can be exempted from the submission of annual tax returns.

Disclosure of tax exempt benefits in Form EA and Form E takes up a lot of the employer's effort and time. This requirement should be removed as the benefits are already tax exempt and there are no benefits to be derived by its disclosure

The additional details submitted to the IRB do not generate tax revenue but only result in more administrative burden to the employers thus resulting in an increase in the cost of doing business.

(d) Requirement for manual sign-off after submission

Currently there is a statutory requirement for a manual sign-off after submission of a tax return by e-filing. However, in practice, it is difficult to obtain a manual sign-off from the taxpayer after submission.

This requirement should be dispensed with. This is a reasonable request considering the fact that the Form CP55A itself is a safeguard; besides, the practitioners have in place their own procedures for their clients to confirm the submission of tax computations/returns/forms by e-filing.

This will make e-filing more attractive, and less troublesome for tax agents. In short, with the provisions under Section 152A(3), Section 152A(4), Section152A(5)(a) and Section 152A(5)(b), it appears that S152A(5)(d) of the ITA is

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redundant.

(e) Removal of formula based provisions

To simplify tax compliance, the Institute proposes that formula based provisions, such as Paragraphs 2(1)(b) and 66 of Schedule 3 of ITA, be removed.

(f) Simplification of capital allowance claims

In principle, accounting depreciation is not allowed for tax purposes; instead, capital allowances provide relief for capital expenditure on fixed assets at a prescribed rate as a relief for persons carrying on a business. The rates of capital allowance vary according to industries and types of asset, which are different from the accounting depreciation rates. There are detailed rules, in both the legislation and rulings, to determine what assets qualify for capital allowances and what assets do not qualify. Apart from the type of asset acquired, the eligibility for allowances also depends on its purpose and function of the asset in the business. In the light of this, much of the resources of the business enterprises would be spent on information retrieval, and this reflects the difficulties in categorising fixed asset expenditure as the level of detail required for a capital allowance claim is much greater than most businesses would record on their fixed asset register for accounting purposes. Therefore, the current mechanism on capital allowance claims is too onerous and it is administratively not cost beneficial.

It is proposed that the Tax Authorities:-

i. consider the convergence of tax treatment of CA relief with the applicable accounting depreciation; or

ii adopt a simplified mechanism in claiming CA relief based on a broad basis to replace the existing detailed analysis approach.

(g) Capital allowances on small value assets

To simplify the tax treatment, small value assets should be given an outright revenue deduction instead of a 100% capital allowance claim. Further, the cap of RM10,000 on aggregate value of small value assets should be removed for non-SME companies to avoid having two different treatments for small value assets, thereby complicating the tax treatment on disposal.

(h) Agriculture allowances in a controlled transfer

Paragraph 38, Schedule 3 of the ITA states that the control transfer provisions apply to a person who disposes of an asset for which agricultural allowances have been made. However, Paragraph 10 of Income Tax (Capital Allowances and Charges) Rules 1969 [the Rules] is silent on agricultural charge. The Rules only prescribe the manner in which the disposer's residual expenditure on the first day of the disposer's final period is determined, and the amount of qualifying agriculture (formerly, "plantation") expenditure deemed incurred by the acquirer for the purposes of paragraph 39 of Schedule 3 of the ITA.

The Income Tax (Capital Allowances and Charges) Rules 1969 should be updated to ensure that an agriculture charge does not arise under a controlled transfer situation and the words “plantation expenditure" wherever it appears should be

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replaced with "agriculture expenditure".

(i) Basis periods for companies/Malaysian branches

Currently, a company/Malaysian branch is assessed from the date of commencement of business to the end of that financial year-end if that is a 12-month period. Otherwise, the basis periods for the relevant years of assessment will directed by the DGIR, i.e., from the date of commencement to 31 December and thereafter annually to 31 December until the first set of accounts are made up for a period of 12 months This creates a lot of administrative burdens as income and expenses have to be apportioned according to the basis periods where there is an overlapping of basis periods for two years of assessment.

The IRB should adopt the accounting periods from the date of incorporation/registration to the financial year-end for new companies or Malaysian branches as the basis periods although they are not part of a group of companies. This is to simplify the tax law and to facilitate compliance without the need to direct their basis periods for the relevant years of assessment.

(j) Income Tax (Accelerated Capital Allowances) (Plant and Machinery) Rules 2009 [P.U. (A) 111/2009]

P.U.(A) 111/2009 allows a person resident in Malaysia to claim ACA in two years on the qualifying plant expenditure incurred on or after 10 March 2009 but not later than 31 December 2010. However, Rule 6(d) stipulates that the incentive does not apply to a resident who in the relevant period "**qualifies**" for an allowance at a higher fraction under the Act or any rules made under Section 154 of the Act".

Paragraph 19A, Schedule 3 of ITA allows a resident person to claim 100% capital allowance on small value assets. As all companies have small value assets and will therefore qualify for Para 19A Sch. 3 allowance, it appears that there is an anomaly as no entity will be able to enjoy P.U. (A) 111/2009 at all.

CTIM believes that this is not the intended effect and that the non-applicability provision should have been worded as "companies which claim for....". Nevertheless, the wording as it stands seem to disallow practically anyone from claiming the ACA under P.U.(A) 111/2009.

CTIM is of the view that such stipulations are confusing and counter productive.

F-3 Enhancing Tax Administration

(a) Resolving operational bottleneck

With the introduction of the self-assessment regime, the IRB and MOF are facing challenges in various aspects of tax administration, and the limited internal resources have been stretched, thereby causing efficiency and delivery issues.

CTIM proposes the following:

(i) Out-sourcing of some of the technical research work to professional services firms.

(ii) Establishment of a Consultative Panel to provide a permanent avenue for consultation between the public sector and private sector on tax issues.

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(iii) Appointment of prominent and experienced practitioners as advisers who appreciate the business realities and can adapt the system as and where necessary. They can also serve as avenues to provide feedback to enable changes to be implemented on a timely basis.

(b) Access to IRB's records by taxpayers

Currently, taxpayers may only know their tax status if they personally make a visit to the relevant IRB branches.

A facility should be provided to taxpayers via an online system to enable taxpayers to access their tax records with IRB such as status of tax payment, issuance of assessments, imposition of penalties, etc.

(c) Self-amendment of tax computation

Although Malaysia has changed the basis of assessment for income tax to the current year basis and introduced self-assessment, only piecemeal amendments have been made to the ITA.

For example, a taxpayer who wishes to revise his tax returns after 30 days from the due date (deemed assessment) has to file Form N (*Application for Extension of the Period for Making an Appeal to the Special Commissioners of Income Tax*) under Section 100(1) of the ITA. Hence, it differs from the practice under the official assessment regime where the taxpayer may appeal, and the DGIR may consider the appeal, and a Form N is formally filed when necessary.

A taxpayer may claim for a relief for error or mistake under Section 131 of the ITA. However, Section 131 and Form CP15C (*Application for Relief in respect of Error or Mistake*) for appeal under Section 131 of the ITA, indicates that such a relief is available for a tax payable case. Where a computational error is made in a loss case or where there are losses carried forward, or unabsorbed capital allowances carried forward, or investment tax allowances carried forward, have been stated wrongly, etc, there appears to be no relief.

The Institute is of the view that specific sections of the ITA should be reviewed in view of self-assessment system of taxation. Essentially, in a case where there is no tax payable, in a deemed assessment, should there be a need to self-amend the tax return, relief (for error or mistake) should be allowed.

(d) Waiver of debt which was deducted from non-business sources of income

For the purpose of clarity and certainty, a provision similar to Section 30(4) of the ITA should be introduced.

F-4 Tax Licensing

CTIM has on various occasions in the past made suggestions to the MOF regarding issues concerning tax administration, in particular, the licensing of tax agents. The Institute would like to reiterate those issues as follows:

(a) Eligibility

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i. Qualifications recognised for tax licensing purposes

The Institute suggested that there should be clear criteria established in a transparent manner for any qualification to be recognised for tax licensing purposes. An applicant for a tax licence should be a member of a recognised professional body, preferably a tax professional body.

ii. Accreditation of professional bodies for tax licensing purposes

In accrediting the professional bodies, there must be clear criteria established in a transparent manner.

The Institute would like to emphasise that any organisation recognised by the MOF should be a professional body should have a full set of rules to govern its members, conduct CPD courses and events, conduct professional examinations, have membership criteria for admission of members, publishes journals/magazines regularly to update members, etc.

(b) Licensing mechanism

i. National Supervisory Body to administer licensing of tax agents

The Institute holds the view that self-regulation is the answer in enforcing quality and ethical standards in any profession. Currently, a tax agent does not necessarily have to be a member of any professional body and this poses a practical regulatory issue. This is a totally different position when compared to the accountancy, legal, medical and other professions in Malaysia.

In the long term, a National Supervisory Body (NSB) with the authority to impose disciplinary sanction, should administer the licensing of tax agents. The NSB would relieve the burden on the MOF and would be able to react on a timely basis in meeting the needs of tax practitioners

A National Supervisory Body (NSB) should be established by appointing an existing professional body to undertake this process or setting up a separate entity through legislation requiring all tax agents to be a member of the NSB.

In the immediate term, it is more pragmatic for the MOF to accredit a tax professional body to regulate tax agents. A tax agent's licence will then only be issued to an individual who has obtained membership of the accredited professional body and met all other requirements.

ii. Participation by professional bodies in licensing interviews

Unlike other professions, the tax professional body is not involved in the evaluation interview of tax agents. This is certainly an area that needs to be looked into from the aspect of governance and transparency.

The Institute is of the view that in enforcing quality and ethical standards in any profession, self-regulation is the key. The participation of the professional body in the licensing process will strengthen communication and co-operation between tax practitioners and the MOF. It enhances confidence as well as improve the quality of selection. It will also act as a check and balance to prevent any deviation from the selection policy or

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curtail any abuse of power. The Institute looks forward to its participation in the licensing interview.

(c) Awarding of CPD points

i. Widening the recognition of tax seminars/courses

Many organisations, including professional bodies, seminar/conference organisers, accounting and tax firms, universities, etc. conduct good tax seminars/courses with high technical contents and meet the needs of practitioners. However, these seminars are not recognised under the tax licence guidelines as being eligible for CPD points. is of the view that it is best left to the practitioner to decide which events meet his/her needs. So long as a programme has a strong tax content, then the programme should be duly recognised.

The MOF may specifically recognise the events organised by other persons (i.e. by including the organisations in the tax licence guidelines which would mean that the guidelines have to be amended regularly to incorporate new organisations) or to grant others the freedom to organise such events and award CPD points in accordance to broad guidelines issued by MOF. The Institute could also assist in vetting, accrediting and awarding CPD points to these courses.

The MOF could state the general criteria that such seminars/courses should meet or comply with and then leave it to the profession. There may be a need to do a review or an audit of some of the events from time to time to ensure that these are in compliance with the set criteria.

ii. Recognition of non-technical courses that are relevant to tax practitioners

It is a fact that a tax professional/practitioner has to update himself/herself on both technical and non-technical aspects as these are essential to managing a tax practice.

A seminar which, besides tax aspects, also looks at management skills for tax professionals is important. So long as a course has say a 60% content in terms of technical aspects of taxation, the course should be fully recognised for the awarding of CPD points.

iii. CTIM as the approving body for awarding CPD points

The Institute feels that the MOF should not be burdened with evaluating any submission for accreditation of events for CPD points. If there are sufficient guidelines, then these would suffice to guide anyone.

The Institute, having been in existence for more than 18 years, being well-recognised locally and internationally as well as being a representative of the tax profession in Malaysia (made up of tax agents, academics, lawyers and personnel in commerce and industry) is prepared to offer its assistance in being the evaluating/approving body for the awarding of CPD points to other organisations, if necessary.

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F-5 Implementation of Goods and Services Tax (GST)

The Goods and Services Tax Bill has been tabled in the Parliament for first reading in December 2009. However the MOF has subsequently decided to defer the date of the debate on the Bill.

(a) Preparation for GST Regime

Although the MOF has decided on the deferment of the implementation of GST, in due course, where appropriate, the minimum time frame of one year as recommended by the International Monetary Fund for the implementation of GST should be adhered to, and guidelines/rulings on specific arrangements/ administrative practices should be issued to the public on a timely basis to ensure transparency and clarity.

The Institute urges the Royal Malaysian Customs (RMC) to engage the private sectors, in particular, the tax agents and the relevant industry stakeholders, in prior consultation on the proposed guidelines/rulings on specific arrangements / administrative practices. Drafts of the documents should be issued to the relevant stakeholders for effective feedback and the final documents should be issued to the public on a timely basis to ensure transparency and clarity.

CTIM hopes that the RMC will continue to educate the public on the new tax regime to ensure a smooth implementation.

(b) GST Implementation Costs

In anticipation of the GST implementation, companies will need to incur expenses to enhance or improve their IT systems, training their workforce, etc.

Expenses incurred for the implementation of GST should be specifically deductible for tax purposes by legislation.

(c) GST Licensing

The Clause 174 of the GST Bill 2009 stipulates that no person shall be permitted to act *on behalf of any person* for any matter under the GST Act unless he is a tax agent.

The Institute welcomes the licensing of tax agents as this will enhance the standard of professional services rendered. In view that GST is already tabled for first reading, the Institute proposes the following:

(i) Currently, many of the tax agents licensed under Section 153 of the Income Tax Act 1967 and members of the Institute are also providing indirect taxation services, including Sales and Service taxes, to their clients. Many of them have international exposure on indirect taxes such as VAT, GST, etc.

To relieve the MOF/Royal Malaysian Customs (RMC) from the administrative burden of evaluating and screening of applications for the licence, the Institute suggests that tax agents licensed under Section 153 of the ITA, who are members of CTIM and who have knowledge of customs matters including sales tax and service tax, and members of the Institute should be automatically allowed to be tax agents for GST purposes; any complaints

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against the tax agents may be brought to the attention of the MOF or the Institute for disciplinary action.

The Institute is of the view that tax agents should be members of a professional body so that the members may be disciplined and regulated through the professional body, thereby enhancing the standard of professional services.

(ii) With the impending introduction of GST, it is anticipated that there will be insufficient GST advisers during the pre-implementation and initial implementation stages to guide the taxpayers to comply with the statutory requirements.

To ensure a smooth implementation, CTIM is of the view that the details on GST licensing should be published as soon as possible so that interested parties may prepare themselves for the GST licence.

(iii) Licensing of professional services usually comes with the introduction of Continuing Professional Development programmes which help to keep the professionals abreast of the latest developments.

The Institute would like to know the criteria to apply for GST licence and the measures the authorities have in mind to ensure that the service providers, in particular the corporate tax agents are kept abreast of their professional knowledge.

(d) Training for the GST Tax Agents

The Institute is of the view that the existing tax agents are the core group of persons that need to be trained thoroughly as they are the front line professionals that are in touch with taxpayers. Training a tax agent is similar to training a trainer and the effect is multifold. The RMC will not have the resources to train all the taxpayers! It is the tax agents that are finally going to do the job of educating the taxpayers.

The Institute would like to request the assistance of the RMC in conducting the training programmes for the public and the tax agents.

G PROMOTING EQUITABLE AND BUSINESS-FRIENDLY TAXATION SYSTEM

The Institute is continuously reviewing the taxation system of our country to ensure that it is equitable and business-friendly. Maintaining a competitive fiscal environment is important for Malaysia in view of the keen competition from the ASEAN region.

G-1 Taxpayers' rights

With the implementation of the self-assessment system, the IRB is able to place emphasis on enforcing compliance via tax audits and investigations. Compliance with the tax legislation must be strictly enforced and tax offences such as non-compliance and tax evasion should be penalised. Civil investigation is one of the measures of enforcement.

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Penalties imposed should commensurate with the degree of culpability of the offence. To further promote effective enforcement, criminal investigations are also being carried out by the IRB.

With wider powers granted to the IRB, it is even more pertinent that the *rakyat* is fully aware of their rights and obligations as a taxpayer. The tax system should be clear, transparent and equitable. It is noted that the IRB has recently revised its Client's Charter.

The following are proposed-

a) **Introduction of the office of a Taxation Ombudsman as an avenue for taxpayers to forward complaints in relation to non-technical matters.**

b) **Introduction of an AAT (mentioned earlier) for taxpayers aggrieved by decisions of an administrative nature (including the imposition of penalties).**

c) **Establishment of a more effective Taxpayer's Charter or Client's Charter which not only sets out the rights and obligations of taxpayers and certain timelines for the IRB to follow but also effectively monitors the adherence to the Charter.**

d) **Criminal proceedings should only be initiated on repetitive or recalcitrant offenders and not as a first recourse of action.**

G-2 Self-Assessment Regime

(a) Improving effectiveness of self-amendment

A penalty of 15.5% will be imposed on additional tax payable as a result of self-amendment made after 60 days but within 6 months from the due date of filing of the tax return. Where the final tax (after the self-amendment) is lower than the original estimate for which tax had been paid, but higher than the tax originally filed, the difference between the final tax and the tax originally filed will be subjected to the penalty. This will result in a disincentive to file a self-amendment.

The period eligible for self-amendment should be increased from 6 months to one year and no penalty should be imposed if the tax already paid exceeds the final tax after the self-amendment.

(b) Penalty imposed on technical adjustments

Where the amendment to a tax return results in a tax discharged, there is no interest refunded together with the tax discharged; hence it is equitable not to impose penalties when amendments to a tax return results in an additional tax payable and these amendments are done in good faith or the amendments made are technical in nature.

(Under the current scenario, the audit officers impose penalties on all tax adjustments arising from tax audits regardless of whether the issues are of a technical nature or otherwise).

Section 77B of the ITA should be amended by using similar wordings found in Section 107B(6) which empowers the DGIR to remit the increased sum.

This is because the amendment could be due to appeals to Courts which result in decisions which are not favourable to the taxpayers, or the amendment was due to errors/mistakes made in good faith and without any element of culpability. Thus,

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the penalties of up to 15.5% are not equitable and would discourage voluntary disclosure done in good faith.

Appropriate legislation should be introduced to the effect that no penalties would be imposed if tax adjustments are done due to technical issues or in good faith.

G-3 Tax audit and investigation

(a) Appeal against tax audit/investigation

The conduct of tax audits and investigations should be carried out in a professional manner, whereby the rights of all parties are respected.

CTIM suggests that a clear mechanism should be set for appeals against the manner in which an audit/investigation is carried out. Such appeals should be settled on a timely basis by an independent party such as an Administrative Appeals Tribunal (AAT).

(b) Penalty on longer instalment payment scheme

Paragraph 12.6 of the Tax Investigation Framework issued in 1 January 2007 (effective from 1 January 2007) reads as follows:-

"Where a taxpayer seeks a longer instalment payment scheme than usually permitted, the penalties exigible will be much higher compared with a taxpayer who opts to settle in one lump sum payment or requests for an installment payment scheme of a shorter duration".

Paragraph 12.6 of the Framework should be deleted. A taxpayer should not be penalised merely because he has applied for a longer payment scheme. Instead, taxpayers should be encouraged to make full payment upon finalisation of the investigation and the merits of each case should be considered in granting a longer instalment payment scheme.

G-4 Foreign associations

Currently, an internationally affiliated organisation for the promotion of trade, culture, humanity, education, profession registered in Malaysia is subject to tax on its profits derived from Malaysia. Many of these organisations are non profit-making bodies and are essentially set up to maintain international affiliation. Some may even receive foreign government subsidy to carry out charitable objectives. Generally, these associations can register as companies limited by guarantee. However, this can be administratively cumbersome.

The Government should consider providing favourable treatment for foreign organisations which decide to set up their office or secretariat in Malaysia. The necessary law should be amended to allow easier registration of associations with a large number of foreign members. This would encourage more activities such as publishing, seminars and conferences, etc to be conducted in Malaysia. These international conferences could then translate into economic benefits to the country and promote tourism.

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G-5 Compensation on refund of tax overpaid

Currently the IRB does not pay interest on the tax overpaid or over deducted. Instead, there will be a penalty imposed on the late payment of tax.

For the purpose of equity, the IRB should consider paying a fixed rate of compensation based on the duration of delay in making refunds.

G-6 Simplifying deductibility of entertainment expenditure

Entertainment is part of a company's business activity to secure business and sales and segregation between entertainment of potential and existing clients is commercially and administratively impractical.

CTIM proposes that any expense incurred in the provision of entertainment be partially allowed (50%) while those which fall under Section 39(1)(*l*)(i) to (vii) of the ITA be allowed in full. This will ease the administrative work in preparing tax computations and to enhance simplicity in tax compliance under self-assessment regime.

G-7 Extension of eligibility for forest allowances

Currently, the IRB holds the restricted view that forest allowance can only be claimed by a person who has been given the right to extract timber by the Government.

In practice, a concession holder often engages a logging contractor to extract timber. The contractor will incur the capital expenditure on roads and relevant buildings. Both parties are not eligible to claim forest allowances.

CTIM is of the view that the law should be amended to expressly allow the logging contractors to claim forest allowances.

H EXTENDING SOCIAL SAFETY NET AND PROMOTING A CARING SOCIETY

Besides focusing on the serious structural challenges in our economy and we must not neglect our commitment to environmental sustainability and to address wealth disparity. CTIM agrees with the suggestion of NEM report to seek sustainable growth that meets the ongoing needs of the population without compromising future generations by effective stewardship and preservation of the natural environment and resources.

Ever rising energy costs and environmental concerns, together with competitive pressures and globalisation of trades has permanently changed the business landscape. Reducing energy consumption is therefore important for cost-saving and environmental-friendly concern. It is suggested that energy-consumption tax be imposed for usage of energy above a threshold and where a company reduces its energy consumption per unit output, exemption of tax may be given on the amount of energy cost saved. In this way, the savings will be measured against output, hence the revenue collection of the government will not be affected, but the subsidy on the fuel will be reduced.

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H-1 Allowing basis year business loss to set off against income of the spouse

To enhance family ties in time of crisis, the Institute proposes that Section 45 of the ITA should be amended to allow a husband and wife to utilise the basis year business loss of one spouse to be offset against the income of the other. This will strengthen the social support net and is in line with developing a caring society.

H-2 Donations to approved institutions

There should be flexibility in limiting the amount of donation to 10% of aggregate income of a company. There could be a small company which made a small profit say, RM100,000 and which wishes to donate say RM25,000 to a charitable institution. Under the current law, this will be restricted to RM10,000

The Institute is of the view that consistent with the objective of developing a caring society, there should be no restriction on donations made to charitable organisations. The law should be amended to stipulate the higher of 10% of aggregate income or RM25,000 (or some other practical threshold). In addition, the provision should apply to all taxpayers, including individuals, instead of only companies.

H-3 Tax on Interest Income Earned by Associations/Charitable bodies

Many associations (including trade associations) raise scholarships and medical funds to provide assistance to its members. These are positive signs of contribution to assist individuals to enhance the quality of life. These funds are usually kept in fixed deposits at local banks and the interest income derived will be subject to tax at the relevant tax rates applicable to the association.

To assist and maintain these social safety net programmes and to promote the spirit of a caring society, the Institute suggests that the scope of Section 109C of the ITA be extended to include associations i.e. interest income earned would be subject to a 5% final tax instead of subjecting the interest income to tax at the relevant rates applicable to such associations.

H-4 Promotion of ecologically sustainable activities

With growing demands worldwide for businesses to inculcate sustainability in their products and operations (the areas of focus generally including fossil fuels, food, trade, waste management, technology, SMEs, human capital, and ethics), there is a need to look into and implement measures that will deter acts that go against this growing demand.

(a) Levy of carbon tax on the use of fossil fuels

Carbon tax should be levied on the use of fossil fuels. The tax shall be levied at source on the fossil fuels produced in or imported to Malaysia. There will be a different rate for different type of fossil fuels, depending on which is more environmentally cleaner.

(b) Timber levy

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Malaysia, being a tropical country, is rich in forests and biodiversity. In the past, it has been blamed for destroying tropical rainforests and thus contributing to the deterioration of global environment.

A timber levy could be imposed on every tree that is felled whether for development purposes or otherwise. This will increase the awareness and enhance preservation of the green lung, particularly in the city.

(c) Extending Customs And Excise Incentives On Hybrid Cars

Effective from 30 August 2008, franchise holders of hybrid cars whose applications are received by the Ministry of Finance by 31 December 2010 will be given 100% exemption of import duty and 50% exemption of excise duty on new CBU hybrid cars.

The above incentives are only applicable to CBU hybrid passenger cars with engine capacity of below 2,000cc which fulfill the following criteria:-

(i) The hybrid cars should comply with the United Nations definition of "a vehicle with at least 2 different energy converters and 2 different energy storage systems (gasoline and electric) on-board the vehicle for the purpose of vehicle propulsion";

(ii) Engine specification of at least Euro 3 technology;

(iii) Hybrid cars certified by Road Transport Department, obtaining Vehicle Type Approval and certified to have achieved not less than a 50% increase in the city-fuel economy or not less than a 25% increase in combined city-highway fuel economy relative to a comparable vehicle that is an internal combustion gasoline fuel; and

(iv) Emission of carbon monoxide of less than 2.3 gram per kilometer.

It is proposed that:-

(i) The qualifying period for the Customs and Excise incentives be further extended after the expiry date of 31 December 2010;

(ii) The qualifying criteria on engine capacity limit of below 2,000cc be removed such that the incentives could be extended to hybrid cars with all engine sizes;

(iii) The incentives be extended to all environmentally-friendly vehicles such as alternative fuel vehicles (for e.g. solar-powered, green diesel, electric-powered, etc.)

I CONCLUSION

In short, the objectives of the 2011 Budget should ensure that the objective reflects on the needs of rakyat through a consultative approach and the policy is environment-friendly and social and business sensitive so as to develop a more equitable society that spreads opportunity and extends protection to the most vulnerable. From the administrative aspect, it should strive towards simplifying procedures and practices, providing greater transparency and clarity as well as developing effective feedback channels, thereby increasing the administration efficiency. It should also garner greater participation of the

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private sector so as to be more responsive to the changes in the local and international environment.

Once again, the Institute wishes to thank the Ministry for granting us the opportunity to present our views and proposals for the 2011 Budget. We will be pleased to meet with the Ministry to discuss/elaborate on these proposals.

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