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Foreword by President

The CPA *Tax and Investment Review* is intended to serve as a quick source of reference on the latest changes in tax laws and regulations as well as Government's policies and guidelines on investment and incentives.

The publication contains updates on tax laws and regulations, an index of current amendments to the Income Tax Act and related legislation, and a summary of recent tax cases. It also contains quick information on doing business in Malaysia, including Malaysia's investment policies and incentives; the procedures for incorporation of companies; guidelines on foreign investment; list of promoted activities and products; immigration procedures and the contact numbers of the relevant Ministries, Government agencies and regulatory authorities.

The Institute hopes that the publication will not only assist members in their work as business professionals but also their clients and other businesses as a handy source of reference on the latest changes and developments in tax laws, investment policies, incentives and other relevant information on doing business in Malaysia.

I would like to take this opportunity to thank the Institute's Tax Practice Committee for their technical input in the production of this publication. I would also like to thank the various Ministries and Government agencies, especially the Malaysian Industrial Development Authority (MIDA), for allowing us to extract relevant information from their guidelines and publications.

Dato' Abdul Halim Mohyiddin
President
MICPA

Acknowledgement

Special appreciation is expressed to the following Ministries, Government agencies and accounting firms for their significant contributions and technical input towards the production of the CPA *Tax and Investment Review*.

***Ministries and Government Agencies*:**

Kementerian Perdagangan Antarabangsa & Industri
Ministry of International Trade and Industry (MITI)

Lembaga Hasil Dalam Negeri (LHDN)
Inland Revenue Board (IRB)

Malaysian Industrial Development Authority (MIDA)

Percetakan Nasional Malaysia Berhad

Accounting Firms

BDO Binder Tax Services Sdn Bhd

Deloitte KassimChan Tax Services Sdn Bhd

Ernst & Young Tax Consultants Sdn Bhd

Horwath KL Tax Sdn Bhd

KPMG

PriceWaterhouseCoopers

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REVIEW

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IRB (INLAND REVENUE BOARD) GUIDELINES AND RULINGS

SUMMARY OF PUBLIC RULINGS ISSUED BY INLAND REVENUE BOARD

NO	TITLE	DATE OF ISSUE	OBJECTIVE
	2006		
*1	Public Ruling No. 5/2006 Professional Indemnity Insurance	31.05.2006	This Ruling explains: a) the deductibility of premium expense paid for a professional indemnity insurance policy; and b) the taxability of insurance proceeds received on professional indemnity insurance.
*2	Public Ruling No. 4/2006 Valuation of Stock in Trade and Work in Progress (Part 1)	31.05.2006	This Public Ruling on valuation of stock in trade and work in progress will be dealt with in 2 parts. Part 1 of this Ruling explains: a) the importance of valuation of stock in trade and work in progress for the purpose of asccertaining the adjusted income of a person from a business for the basis period for a year of assessment; b) the bases of valuation of stock in trade and work in progress; and c) the special rules to be applied when the person permanently ceased to carry on the business.

*Note: * Public Rulings not published in previous issue of* CPA Tax Review.

NO	TITLE	DATE OF ISSUE	OBJECTIVE
*3	Public Ruling No. 3/2006 Property Development & Construction Contracts	13.03.2006	This Ruling explains: a) the basis of determining gross income for the purpose of computing adjusted income derived from the business of property development; and b) the basis of determining gross income for the purpose of computing adjusted income from the business of construction contracts.
*4	Public Ruling No. 2/2006 Tax Borne By Employers	17.01.2006	This Ruling explains: a) the computation of the perquisite relating to income tax of the employee borne by the employer; and b) the computation of tax payable by the employee who is entitled to this perquisite.
*5	Public Ruling No. 1/2006 Perquisites from Employment	17.01.2006	This Ruling explains: a) the distinction between perquisites and benefits-in-kind (BIK); b) the meaning of perquisites in relation to an employment; c) types of perquisites and the tax treatment; d) the employer's responsibilities upon the granting of perquisites to the employee; and e) the employee's responsibilities on receiving such perquisites.

NO	TITLE	DATE OF ISSUE	OBJECTIVE
	2005		
*1	Public Ruling No. 6/2005 Trade Association	08.12.2005	This Ruling explains: a) the tax treatment accorded to trade associations; and b) the application of relevant Income Tax Exemption Orders relating to trade associations.
*2	Public Ruling No. 5/2005 Deduction for Loss of Cash and Treatment of Recoveries	14.11.2005	This Ruling explains: a) the deductibility of loss of cash in the course of business caused by theft, defalcation or embezzlement; and b) the income tax treatment of recoveries in respect of the loss of cash which has been given a tax deduction in an earlier year.
*3	Public Ruling No. 4/2005 Withholding Tax on Special Classes of Income	12.09.2005	This Ruling explains: a) the special classes of income that are chargeable to tax under section 4A of the Income Tax Act, 1967 (ITA); b) the deduction of tax from these special classes of income; and c) the consequences of not deducting and remitting tax deducted from these special classes of income.
4	Public Ruling No. 3/2005 Living Accommodation Benefit Provided for the Employee by the Employer	11.08.2005	This Ruling explains: a) the tax treatment of living accommodation provided for an employee by his employer; b) the method used to calculate the value of that benefit;

NO	TITLE	DATE OF ISSUE	OBJECTIVE
			c) the circumstances in which the value of that benefit can be reduced; and d) the expenses related to such benefit which can be deducted for income tax purposes and the method of calculation.
5	Public Ruling No. 2/2005 Computation Of Income Tax Payable By A Resident Individual	06.06.2005	This Rulings explains the deductions that are allowable against the total income of an individual in computing his chargeable income for a year of assessment and the income tax computation for an individual for a year of assessment.
6	Public Ruling No. 1/2005 Computation Of Total Income for Individual	05.02.2005	This Ruling explains how total income in respect of an individual is computed.
	2004		
1	Public Ruling No. 5/2004 Double Deduction Incentive on Research Expenditure	30.12.2004	This Ruling explains the particular activities that qualify as research, the expenditure that qualifies for double deduction and the general procedure for the application for the double deduction incentive in respect of research expenditure.
2	Public Ruling No. 4/2004 Employee Share Option	09.12.2004	This Ruling explains the tax treatment in respect of a benefit arising from an employee share option scheme (ESOS) received by an

NO	TITLE	DATE OF ISSUE	OBJECTIVE
			employee from his employer by reason of his employment. It also explains the following: a) the circumstances in which the benefit from ESOS will arise; b) determination of the amount or value to be taken as gross income from a source of employment of an employee; c) employer's responsibilities upon launching an ESOS and employee's responsibilities on receiving ESOS benefit.
3	Public Ruling No. 3/2004 Entertainment Expense	08.11.2004	This Ruling explains the tax treatment of entertainment expense as a deduction against gross income from a business.
4	Public Ruling No. 2/2004 Benefits-in-Kind	08.11.2004	This Ruling explains the tax treatment in relation to benefits-in-kind (BIK) received by an employee from his employer for exercising an employment and the method of ascertaining the value of BIK in order to determine the amount to be taken as gross income from employment of an employee.
5	Public Ruling No. 1/2004 Income from Letting of Real Property	30.06.2004	This Ruling considers: a) the treatment of rent as a non-business source of income under section 4(d) of the Income Tax Act 1967 (the Act) b) the situations or circumstances where rent or income from the letting property can be treated as business income of a person under section 4(a) of the Act

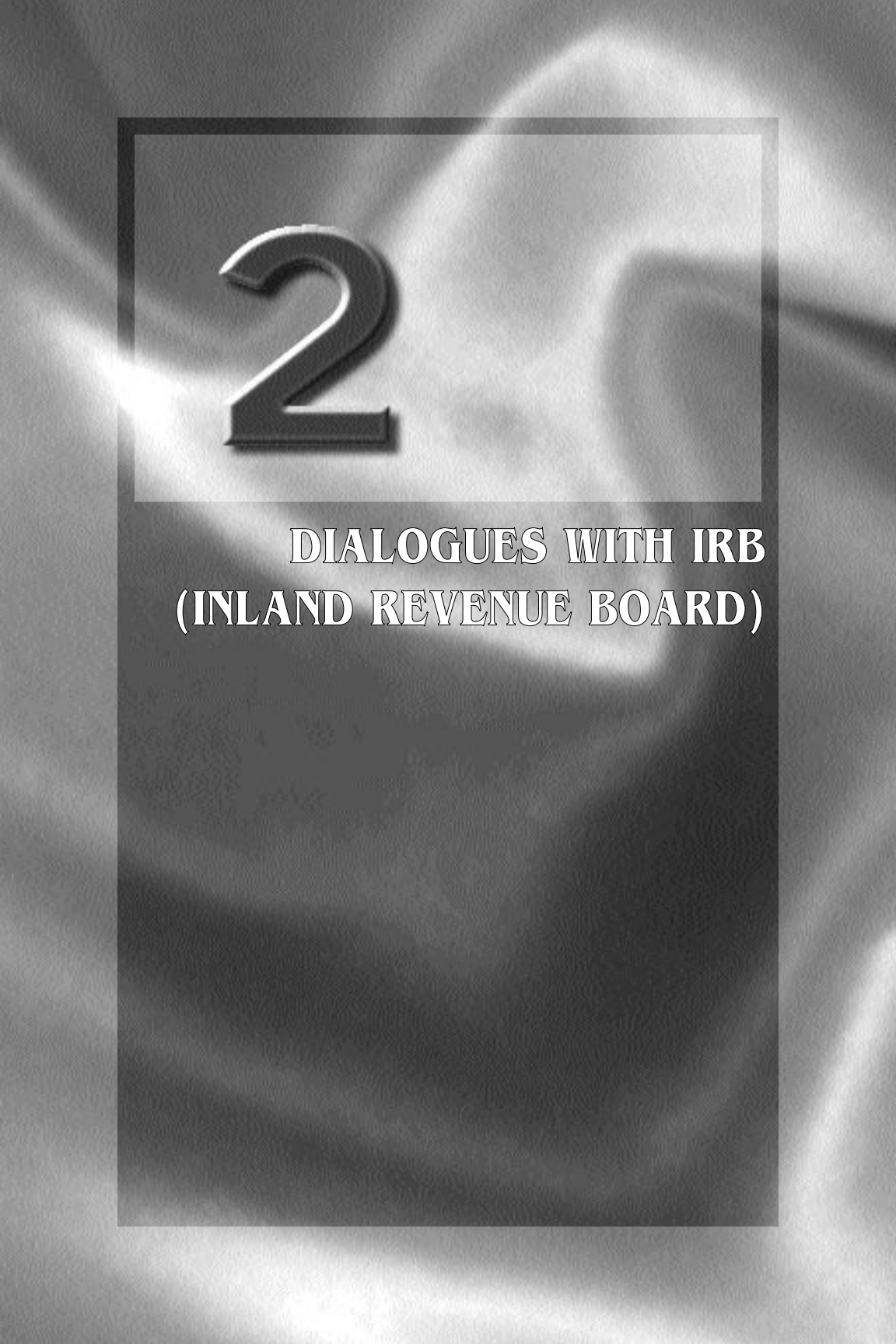
NO	TITLE	DATE OF ISSUE	OBJECTIVE
			c) how all properties of a person are to be grouped in several categories in computing the statutory income under section 4(d) of the Act.
	2003		
1	Public Ruling No. 2/2003 "Key-man" Insurance	30.12.2003	This Ruling explains the deductibility of premium expense paid for a "key-man" insurance policy; and the taxability of insurance proceeds received on "key-man" insurance.
2	Public Ruling No. 1/2003 Tax Treatment of Leave Passage	05.08.2003	This Ruling explains the tax treatment of: a) leave passage provided for the employee by or on behalf of his employer as a benefit or amenity taxable under gains or profits from an employment; and b) expenditure incurred on leave passage provided to the employee by the employer in ascertaining the adjusted income of the employer.
	2002		
1	Public Ruling No. 2/2002 Allowable Pre-operational & Pre-commencement of Business Expenses for Companies	08.07.2002	This Ruling applies in respect of pre-operational and pre-commencement of business expense allowable to a company under the following: a) Income Tax (Deduction of Incorporation Expenses) Rules, 1974 [p.u.(A) 134 /1974]

NO	TITLE	DATE OF ISSUE	OBJECTIVE
			b) Schedule 4B, Income Tax Act 1967 – Qualifying Pre-operational Business Expenditure c) Income Tax (Deductions for Approved Training) Rules 1992 [P.U.(A)61 /1992] – as amended by Income Tax (Deductions for Approved Training) (Amendment) Rules 1995 [P.U.(A)111/1995]; and Income Tax (Deductions of Pre-commencement of Business Training Expenses) Rules 1996 [P.U.(A) 160 /1996].
2	Public Ruling No. 1/2002 Deduction for Bad & Doubtful Debts and Treatment of Recoveries	02.04.2002	This Ruling applies in respect of the deduction of bad and doubtful debts under section 34 and the treatment of recoveries under section 30 of the Income Tax Act 1967. It is effective for year of assessment 2002 and subsequent years of assessment.
	2001		
1	Public Ruling No. 7/2001 Basis Period for Business & Non-Business Sources (Companies)	30.04.2001	This Ruling applies in respect of section 21A of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment. This Ruling supersedes Public Ruling 2/2000 dated March 1, 2000 where it relates to companies.

NO	TITLE	DATE OF ISSUE	OBJECTIVE
2	Public Ruling No. 6/2001 Basis Period for a Business Source (Individuals & Persons other than Companies/Co-operatives)	30.04.2001	This Ruling applies in respect of sections 20 and 21 of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment. This Ruling supersedes Public Ruling 3/2000 dated March 1, 2000.
3	Public Ruling No. 5/2001 Basis Period for A Business Source (Co-operatives)	30.04.2001	This Ruling applies in respect of sections 20 and 21 of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment. This Ruling supersedes Public Ruling 2/2000 dated March 1, 2000 where it relates to co-operatives.
4	Public Ruling No. 4/2001 Basis Period for a Non-Business Source (Individuals & Persons other than Companies)	30.04.2001	This Ruling applies in respect of sections 20 and 21 of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment. This Ruling supersedes Public Ruling No. 1/2000 dated March 1, 2000.
5	Public Ruling No. 3/2001 Appeal Against an Assessment	18.01.2001	This Ruling applies in respect of section 99, 100, 101 and 102 of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment.

NO	TITLE	DATE OF ISSUE	OBJECTIVE
6	Public Ruling No. 2/2001 Computation of Initial & Annual Allowances in Respect of Plant & Machinery	18.01.2001	This Ruling applies in respect of the computation of annual allowances for plant and machinery under paragraph 15, Schedule 3, Income Tax Act 1967 and the Income Tax (Qualifying Plant Annual Allowances) Rules 2000 [P.U.(A) 52/2000]. This Ruling is effective for year of assessment 2000 (current year basis) and subsequent years of assessment.
7	Public Ruling No. 1/2001 Ownership of Plant and Machinery for the Purpose of Claiming Capital Allowances	18.01.2001	This Ruling applies in respect of ownership of plant and machinery for the purpose of claiming initial and annual allowances under paragraphs 10 & 15, Schedule 3 to the Income Tax Act, 1967. It is effective from the year of assessment 2000 (current year basis) and subsequent years of assessment.

Note: The above Public Rulings are available on Inland Revenue Board's website at www.hasilnet.org.my.



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DIALOGUES WITH IRB (INLAND REVENUE BOARD)

A Dialogue with the Revenue Management Department of Inland Revenue Board

1.0 A dialogue between the of the Revenue Management Department of Inland Revenue Board (IRB) and representatives of MICPA, MIA, MIT, MAICSA, MATA and MACS was held on April 10, 2006.

2.0 Isu-isu Asal daripada MIT / MIA / MICPA

2.1 Submission of Income Tax Returns

Currently, all non-business income individual tax returns (Form BE) are required to be filed by 30 April. As most of the individual taxpayers are under this category and there is only one deadline for them to file the tax returns and settle the balance of the tax liability by 30 April, a lot of problems/ difficulties were encountered last year by members of the Institutes. These difficulties are highlighted below with the view of ensuring that these issues can be handled effectively this year.

2.1.1 Submission by courier services

With regard to the submission of tax returns (Forms BE) to the Processing Centre at Pandan Indah by courier services, the Institutes were informed that the courier services staff can proceed to the 12th Floor of the Processing Centre and drop the return forms at the counter without the need to queue up. However, the courier staff would only be able to obtain the acknowledgement copy one week later. The LHDNM's officers will sort out the acknowledgement copy according to the name of the courier service company.

In view of the above, the Institutes sincerely hope that, where necessary, more LHDNM staff are deployed so as to speed up the matter and the acknowledgement copies could be given out immediately upon verifying that the relevant return forms are received.

JAWAPAN:

Pembayar cukai dan ejen cukai sentiasa dinasihatkan supaya mengemukakan borang nyata dengan lebih awal.* Oleh *kerana bilangan borang yang diterima pada hari-hari terakhir menjelang* 30 April *adalah terlalu banyak, maka masa

diperlukan untuk menyemak dan mengesahkan penerimaan borang-borang yang dihantar melalui perkhidmatan "courier" bagi mengelakkan sebarang masalah/pertikaian kelak. Pihak Persatuan diminta bekerjasama supaya jangan menghantar borang-borang nyata pada saat-saat terakhir.

Untuk mengatasi masalah tersebut, penggunaan e-filing digalakkan kerana akuan terima dapat diperolehi secara "on-line". Pelbagai usaha telah dilakukan oleh LHDNM termasuk pemberian sijil digital percuma dan taklimat pembelajaran e-filing kepada pembayar-pembayar cukai di sektor awam dan swasta. Pihak Persatuan diminta menyokong usaha LHDNM dengan menggunakan e-filing mulai tahun ini dan mengubah cara pemikiran ("mindset")/keyakinan pembayar cukai terhadap penggunaan e-filing. Pihak Persatuan boleh menghubungi LHDNM jika pembelajaran e-filing diperlukan dan sekiranya menghadapi masalah talian.

2.1.2 Submission via postal services

The Institutes were also informed that the postal date is acceptable as the date of submission of the tax return to the LHDNM if one uses postal services.

Please be informed that the only way a taxpayer can get evidence of posting is via registered mail or delivery by Poslaju. This means additional cost to taxpayers. Normal mailing of tax returns, however, does not seem to suffice as no proof of posting is available. Notwithstanding this, we believe that the LHDNM should be assisting taxpayers rather than having taxpayers incur additional costs. It should be noted that when the LHDNM sends out correspondence to taxpayers, the letters are not registered or sent via Poslaju and the LHDNM does not need to have any proof of posting a letter. The taxpayer should not be placed in a different situation.

In this connection, the Institutes hope that the LHDNM can look into other ways of assisting taxpayers on this matter.

JAWAPAN:

Sebagai konsesi, penalti tidak akan dikenakan sekiranya borang nyata diterima dalam tempoh 14 hari dari tarikh terakhir untuk pengembalian borang nyata. Untuk borang nyata yang diterima selepas tempoh 14 hari tersebut di mana penalti telah dikenakan, rayuan boleh dipertimbangkan jika dapat dibuktikan bahawa ia dihantar pada atau sebelum tarikh terakhir untuk pengembalian borang nyata.

2.1.3 Submission to assessment branches

We would like to seek confirmation as to the current position for the submission of Form BE and Form B on 30 April and 30 June respectively.

The Institutes are of the view that insisting that all taxpayers to go to Pandan Indah to file tax returns is not an appropriate step. This causes various problems including long queues which resulted in the courier companies refusing to deliver the outstation return forms to Pandan Indah as mentioned in 1.1 above as well as unnecessary stress and frayed tempers. We do note that in the last few days of April 2005, other branches did accept tax returns.

In this regard, the Institutes would like to suggest that taxpayers/tax agents be allowed to submit tax returns at the various Assessment Branches so as to avoid the bottleneck that would normally occur on the last day of filing tax returns. These branches can then collate and send the tax returns to the Processing Centre. We believe this should be part of the service provided by the LHDNM.

JAWAPAN:

Semua borang nyata mesti dikemukakan ke Pusat Pemprosesan di Pandan Indah, Kuala Lumpur. Untuk mengatasi masalah ini, pihak Persatuan digalakkan supaya menggunakan e-filing mulai tahun ini.

2.1.4 Acknowledgement cards

The Institutes were surprised to be informed that last year acknowledgement cards were not issued to taxpayers who came to file their tax returns.

We would like to suggest that such cards/slips should be issued to taxpayers as proof of submission. For the future, we would like to suggest that on the cover page of the tax return, the LHDNM could have a perforated slip which can be filled up by a taxpayer and torn off and then stamped by the LHDNM counter staff to acknowledge receipt. This would cut down the time spent in filling up acknowledgement cards.

JAWAPAN:

Amalan mengeluarkan kad akuan terima tidak akan dipraktikkan lagi oleh LHDNM. Sekiranya borang nyata dikemukakan melalui e-filing, akuan terima dapat diperolehi secara "on-line".

2.2 Completion of Borang B/BE

The Institutes wish to seek clarification on the following matters:-

2.2.1 Where column is not applicable

It is noted that certain items in a particular column in the Borang B/BE may not be relevant to all taxpayers.

The Institutes wish to clarify in such instances should the column be (i) left blank, (ii) a dash be drawn across the last 3 boxes or (iii) a "0" is inserted.

(We have been informed that the Kuantan branch office is advising taxpayers to leave the column blank whilst a sample of the Borang BE from the e-filling software shown during the Program Pembelajaran shows a "0". It is also noted that for the completion of Borang C & R, taxpayers are allowed to either leave the column blank or indicate a dash in the column.)

JAWAPAN:

Ruang yang tidak berkenaan tidak perlu diisi.

2.2.2 Assistance

As 2005 was the first year the Borang B/BE was submitted, it is highly likely that mistakes were made by taxpayers and tax agents in completing the forms.

In order to minimise future errors, the Institutes propose that the LHDNM provide assistance in highlighting whatever errors made and the correct approach that should be adopted to avoid a repeat of such errors.

JAWAPAN:

LHDNM *berterima kasih atas inisiatif pihak* Persatuan *untuk mengurangkan kadar kesilapan dalam pengisian* Borang B/BE.

Sila *rujuk* Lampiran *yang disertakan untuk senarai kesilapan-kesilapan biasa dalam pengisian borang nyata berdasarkan* Borang B/BE 2004.

2.2.3 Issuance of Borang B/BE

It was reported in the Chinese dailies that the LHDNM may not be issuing the Borang B/BE for Year of Assessment 2007 to taxpayers in view of the available e-filing services.

The Institutes would like to seek clarification on the accuracy of such reports and highlight that the practice of the LHDNM in issuing the return forms should continue. To facilitate the successful implementation of the self assessment system, this would require the co-operation of both the LHDNM and taxpayers.

JAWAPAN:

Tiada isu.

2.3 Payment of Final Tax Liability to be given 30 days Extension of Time from the Date of Submission of Tax Return

Under the Official Assessment System, the legislation allowed the taxpayers to pay tax to the LHDNM within 30 days from the date of issuance of a Notice of Assessment and a grace period of additional 14 days was granted by concession.

It is proposed that a provision be introduced in the current tax legislation to allow taxpayers to settle their final tax balance within 30 days from the date of submission of the tax returns (deemed assessment) so as to ease the financial burden of the taxpayers.

JAWAPAN:

***Layanan yang sama seperti untuk borang nyata iaitu tempoh* 14 *hari dibenarkan sebagai konsesi. Sila rujuk Perkara* 2.1.2.**

2.4 Utilisation of Tax Credits

2.4.1 The Institutes are of the view that the utilisation of available tax credits should not be by request. The offset of tax credits should be done automatically so long as there are available tax credits unless a request for refund has been made by the taxpayer. Taxpayers should not be required to make a request for an offset. This would assist to ease the administrative burden of both the LHDNM and taxpayers.

JAWAPAN:

Tuan Pengerusi menjelaskan bahawa terdapat dua keadaan "set-off" untuk kes "clear credit" iaitu:-

(a) "set-off" adalah automatik bagi cukai yang masih terhutang; dan

(b) baki kredit (jika ada) selepas itu boleh digunakan sepenuhnya untuk "set-off" ansuran akan datang yang perlu dibayar (tiada had bilangan ansuran) tetapi permohonan daripada pembayar cukai diperlukan.

Kredit cukai akan dibayar balik sekiranya tiada permohonan daripada pembayar cukai.

Pihak Persatuan boleh menghubungi* LHDNM *sekiranya terdapat masalah di cawangan berhubung perkara di atas.

2.4.2 Under the self assessment system, when the tax returns are filed, any excess tax paid can be refunded or utilised to offset against future tax liabilities. We have been informed that in practice, such tax credits will only be allowed for utilisation after the return has been keyed into the system.

The Institutes are of the view that where the taxpayer is able to provide supporting documents to substantiate the available tax credits, the utilisation should be allowed by the LHDNM. The Institutes also wish to clarify the time frame taken from the submission date to the time the relevant data is captured into the system.

JAWAPAN:

"Clear credit" hanya dapat ditentukan selepas borang diproses, di antaranya cukai kena bayar mesti direkodkan dalam lejer pembayar cukai.

Pemprosesan borang fizikal memakan masa kerana perlu melalui pelbagai proses seperti pengisihan borang, kemasukan data dan sebagainya. Walau bagaimanapun* LHDNM *akan menangani masalah tempoh pemprosesan borang tetapi pihak Persatuan juga boleh membantu dengan memastikan bahawa borang nyata yang dikemukakan adalah teratur; dan kes-kes bayaran balik diasingkan dan dicatatkan sedemikian pada sampul surat. Ini adalah kerana kes-kes bayaran balik seksyen 110 (dividen) dan lebihan bayaran akan diproses terlebih dahulu.

Sebagai langkah mempercepatkan pemprosesan borang,* LHDNM *menggalakkan penggunaan e-filing.

2.5 Processing of Dividend Vouchers in a Section 110 Refund Case

Where there is a repayment arising from Section 110 credits, taxpayers are required to submit the original dividend vouchers together with the tax return to the Processing Centre. After the necessary verification by the Processing Centre, the original vouchers are returned to the taxpayers. However, when a desk audit is carried out, the Cawangan Syarikat has requested for the dividend vouchers again.

The Institutes wish to clarify the procedure undertaken by LHDNM to process repayments arising from Section 110 credits and the need for the dividend vouchers to be submitted twice to the LHDNM. The Institutes also wish to highlight that in the spirit of self assessment, the refund of Section 110 credits should be processed irrespective of whether tax audits have been conducted.

JAWAPAN:

Senario ini berlaku apabila pembayar cukai memohon supaya dipercepatkan kes bayaran balik ataupun bila kes diaudit. Mengikut prosedur, kes bayaran balik seksyen 110 (dividen) biasanya akan diaudit untuk mengesahkan kesahihan baucar dividen.

Di bawah keadaan biasa, sekiranya borang nyata adalah lengkap dan betul; dan baucar dividen telah disenaraikan dengan betul dan teratur dalam helaian kerja HK-3, maka tempoh purata lebih kurang satu bulan diperlukan untuk memproses. Akan tetapi tempoh proses tidak lagi sedemikian jika borang diterima pada hari-hari terakhir menjelang tarikh terakhir untuk pengembalian borang nyata.

2.6 Outstanding Taxes

The Institutes have been informed that the LHDNM has issued letters regarding the outstanding taxes payable by some companies. The companies are required to respond or settle the outstanding amount within 14 days from the date of the letter, failing which actions may be taken against the company or the directors under Section 75A of the Income Tax Act 1967 (the Act). However, no detailed calculation was provided as to the derivation of the outstanding figure.

The Institutes would like to highlight the following:-

(a) the calculation of the outstanding tax payable figure should be provided to enable taxpayers to understand the derivation of the said figure in order for them to respond;

(b) a reasonable time frame should be given for taxpayers to verify and revert to the LHDNM.

JAWAPAN:

(a) Pada kebiasaannya,* LHDNM *akan memberikan pengiraan cukai masih terhutang yang kena dibayar. Akan tetapi sekiranya tiada sebarang maklum balas daripada pembayar cukai dalam tempoh masa yang dinyatakan,* LHDNM *akan mengeluarkan surat pemberitahu cukai masih terhutang yang dijanakan oleh sistem berdasarkan baki bersih dan tidak menunjukkan pengiraan terperinci. Pembayar cukai boleh menghubungi Cawangan/Unit Pungutan yang mengendalikan kes tersebut untuk mendapatkan pengiraannya.

(b) Sekiranya tempoh masa yang diberikan tidak memadai, pembayar cukai boleh memohon untuk lanjutan masa berdasarkan fakta kes.

2.7 Issuance of Computation of Repayment

Members of the Institutes have informed that Computations of Repayment (COR) have been issued for companies before desk audits are carried out. It is expected that upon the receipt of a COR, the refund cheque would be sent to the taxpayers in due course. However, upon further enquiry, taxpayers have been informed that the case has not been selected for audit and therefore, the refund cheques cannot be processed.

The Institutes would like to seek clarification as to when a COR would be issued as the above practice creates confusion.

JAWAPAN:

Pengiraan bayaran balik* (COR) *hanya dikeluarkan selepas tindakan Audit Meja diambil.

2.8 Benefit of Doubt to be given to Expatriate Employees whose Residence Status could not be determined at the point of Submission of the Tax Return

In view of the manner in which the tax residence status is determined (especially for individuals who may qualify as a tax resident under Section 7(1)(b) of the Act), an expatriate who may technically not be qualified as a tax resident at the time of filing of the tax return, may be qualified as a tax resident if time up to July of the same calendar year was given.

In view of the above circumstance, the Institutes would like to request the LHDNM to accept the tax return which is filed based on tax resident basis and only raise the Additional Assessment without imposing any penalties if the individual expatriate fails to qualify as a tax resident subsequently. The individual expatriate would then settle the additional tax when the Additional Assessment is issued.

JAWAPAN:

Mengikut prosedur biasa, majikan dinasihatkan supaya membuat potongan* PCB *pada kadar* 28% *bagi tempoh enam bulan pertama pekerja asing itu berada di* Malaysia. B*agi pekerja asing yang datang selepas bulan* Jun*, majikan perlu membuat potongan* PCB *pada kadar* 28% *bagi tempoh enam bulan dalam tahun berikutnya.

Tindakan tersebut diambil kerana:-

(*a*) ***pekerja asing menamatkan tempoh perkhidmatan mereka lebih awal dari tempoh yang tercatat dalam kontrak misalnya dalam tempoh* 24 *jam; dan ini mengakibatkan cukai terhutang yang tidak dapat dijelaskan.***

(*b*) ***pekerja asing tidak mematuhi syarat perenggan* 7(1)(*b*) Akta Cukai Pendapatan 1967 *kerana tempoh ketiadaan sementara (“temporary absence”) bagi lawatan sosial sering melebihi* 14 *hari.***

PCB ***hanya boleh dibuat pada kadar cukai untuk pemastautin jika dapat dibuktikan bahawa pekerja asing itu berada di* Malaysia *sekurang-kurangnya* 182 *hari dalam tahun pertama.***

P*enentuan taraf mastautin berdasarkan permit kerja boleh dipertimbangkan mengikut fakta kes.*

2.9 Resolving Appeals on a Timely Basis

Paragraph 3.7.1 of the Public Ruling 3/2001 provides that an appeal must be forwarded to the Special Commissioners of Income Tax (SCIT) within 12 months from the date of receipt and if the review cannot be completed within that period, the Director General of Inland Revenue (DGIR) may apply for an extension of that period, which will not be more than 6 months.

However, feedback from the members of the Institutes indicates that some of the appeal cases have been outstanding for more than 2 years despite numerous calls and reminders to the Assessment Branch and Technical Division of the LHDNM. The Institutes are of the view that it is unfair to taxpayers as they are forced to pay the tax which in some cases can be very substantial. It is regrettable to hear that a public ruling which is

issued to provide guidance to the public and officers of the LHDNM, is not complied with by the LHDNM's officers but it is required to be complied with by taxpayers. In addition, the Institutes are also of the opinion that the review of an appeal case by the LHDNM for a maximum period of 18 months before it is forwarded to the SCIT is far too long.

In view of the above, the Institutes request the LHDNM to resolve all appeals on a timely basis and expedite the process of the review in accordance with paragraph 3.7.1 of the Public Ruling 3/2001.

JAWAPAN:

Keadaan ini tidak sepatutnya berlaku. Pihak Persatuan diminta menghubungi* LHDNM *sekiranya terdapat kes sedemikian. Arahan telah dikeluarkan kepada semua Pengarah Negeri supaya memantau dan memastikan kes-kes rayuan kepada Pesuruhjaya Khas Cukai Pendapatan diselesaikan dalam tempoh tidak melebihi 12 bulan walaupun lanjutan masa selama 6 bulan boleh dipohon.

2.10. Timely Responses from the LHDNM

2.10.1 Submission of lower tax estimate

Based on the general guideline issued by the LHDNM, Form CP204 which is submitted with a lower tax estimate than the amount allowed by the Act must be accompanied with an appeal letter with valid reasons for the LHDNM's consideration. Consideration of the appeal will be based on the merit of each case as stated in Paragraph 2.1 of the minutes of Operations Dialogue held on 16 February 2005.

Members of the Institutes have highlighted that the reply to the above application is given verbally by the LHDNM's officers without any written evidence for approval or disapproval. The instruction to disregard the Form CP205 which was sent earlier is also given verbally.

JAWAPAN:

Jika surat rayuan diterima bersama dengan borang Anggaran Cukai Yang Kena Dibayar (CP 204), kes tersebut akan diproses dan diluluskan/tidak diluluskan berdasarkan kepada fakta kes. Status kelulusan akan dimasukkan ke dalam sistem komputer dan surat kelulusan (CP 216) akan dikeluarkan oleh sistem kepada pembayar cukai dalam tempoh purata lebih kurang satu bulan. Pihak Persatuan boleh menghubungi Pusat Pemprosesan di Pandan Indah sekiranya CP 216 tidak diterima.

2.10.2 Letter for refund/set-off of credit balances

The Institutes were informed that letters for refund of credit balances are not replied to even though follow-up has been made. For those cases where the taxes have not been assessed yet, the application letters will be put in a wait case and the file will not be distributed to the officers for further action until the taxpayers have done some follow up and requested the officer in charge to look into the refund application.

Members have come across situations whereby the approval to set-off the instalment payments with the credit balance was given verbally by the LHDNM's officer and the instalment payment was discontinued the accordingly. After some time, the taxpayers received a statement showing penalties for those instalments which were allowed to be set-off. Upon further enquiry, members were informed that the officer had resigned and the new person-in-charge alleged that there was no proof of such approval.

In view of the above situations, the Institutes would like to request the LHDNM to update the computerised system on a timely basis and provide a written response (with detailed breakdown for those cases related to tax balances) to all written applications submitted by taxpayers on a timely basis to avoid unnecessary confusion and disputes which is unproductive for all concerned.

JAWAPAN:

Untuk mempercepatkan proses bayaran balik, penggunaan e-filing digalakkan. Jika tiada maklum balas kepada permohonan untuk bayaran balik/"set-off", pembayar cukai dinasihatkan supaya merujuk semula kepada Cawangan/Unit Pungutan yang mengendalikan kesnya. Bagi kes "set-off", adalah dinasihatkan supaya mendapatkan jawapan/kelulusan secara bertulis daripada Cawangan/Unit Pungutan yang berkenaan untuk mengelakkan sebarang masalah/pertikaian kelak.

2.11 Assignment of Tax Officers

The Institutes have been informed that there are instances where no officers have been assigned to handle specific cases at the Cawangan Syarikat. In the event an officer has been assigned, the officer is unable to provide an indication as to when the particular case can be finalised.

The Institutes wish to propose that the assignment of officers be done quickly to expedite the finalisation of cases, especially where revised computations submitted involve tax refunds. Taxpayers are imposed with various deadlines to comply for example, within 7 months after the financial year end to submit the tax returns, within 30 days before the beginning of the financial year to submit the CP 204, etc. Likewise, it is also hoped that officers are able to provide an indication of when the cases can be finalised.

JAWAPAN:

Mengikut Pekeliling yang telah dikeluarkan, kes-kes audit mesti diselesaikan dalam tempoh 3 bulan. Pihak Persatuan diminta mengemukakan senarai kes-kes yang melebihi tempoh 3 bulan walaupun dokumen-dokumen yang dikehendaki oleh LHDNM telah dikemukakan oleh pembayar cukai. Akan tetapi, untuk kes-kes di mana taksiran tambahan dibangkitkan kerana dokumen-dokumen tidak dapat dikemukakan kepada LHDNM sebagai bukti, pembayar cukai boleh membuat rayuan kepada Pesuruhjaya Khas Cukai Pendapatan.

Oleh kerana kebanyakan kes yang dimaksudkan adalah kes rayuan untuk kurangan cukai dan pembayaran balik, LHDNM menasihatkan pihak Persatuan supaya anggaran cukai tidak dibuat dengan sewenang-wenangnya walaupun kesuntukan masa untuk mengemukakan borang nyata mengikut tempoh yang ditetapkan.

2.12 Bilingual Income Tax Returns

With Malaysia opening its doors to foreign manpower, we have seen an increasing influx of expatriates seeking career opportunities in Malaysia. Some of these expatriates may eventually qualify as Malaysian tax residents due to their presence in Malaysia and therefore, will be required under the legislation to discharge their tax responsibilities. With the recent implementation of self-assessment system for individuals, these resident expatriates need to understand their obligations in order for them to fully discharge their responsibilities.

The Institutes would like to propose that the prescribed income tax return be available in both Bahasa Malaysia and English for submission purposes. This will be seen as a genuine gesture of the Government to attract foreign expatriates.

JAWAPAN:

Hanya Borang M ditetapkan ("prescribed") dalam Bahasa Inggeris. Versi Bahasa Inggeris untuk borang nyata lain yang ditetapkan dalam Bahasa Malaysia boleh diperolehi dari laman web LHDNM (http://www.hasil.org.my) untuk rujukan dan tidak boleh digunakan sebagai borang nyata ditetapkan untuk tujuan pengemukaan.

2.13 Management Changes in LHDNM

The Institutes noted that there have been recent management changes in the LHDNM.

The Institutes would like to request that in the spirit of co-operation and dissemination of information, the LHDNM inform its dialogue partners i.e. the Institutes of any such changes so that these changes can be disseminated. Perhaps the Public Relations Department could be assigned to communicate such information to the Institutes.

JAWAPAN:

Pihak Persatuan boleh melayari laman web LHDNM untuk mendapatkan maklumat berkenaan.

Atas permintaan pihak Persatuan, maklumat seperti nama, jabatan/ cawangan dan nombor telefon Ketua-Ketua di Ibu Pejabat dan Cawangan akan dipaparkan/dikemaskinikan dalam laman web.

2.14 Extension of filing deadline for December year-end companies (refer to Minutes of Operations dialogue held on 16 February 2005)

Members of the Institutes have reported difficulties in coping with the volume of tax returns that need to be filed for December-year-end companies in July every year despite taking various measures such as increasing manpower, etc.

Since taxes are being paid by companies under the instalment scheme, the Institutes would like to request the LHDNM to grant an administrative concession of an automatic two-week extension of time to file the tax returns for December year-end companies. The two-week extension of time is needed by the tax agents to handle the large volume of tax returns for such companies.

The LHDNM has stated that for companies which close their accounts on 31 December, the Forms C and R have to be submitted in accordance with the deadline set by the Act (on or before 31 July 2005). Nevertheless, no penalty was imposed on taxpayers if the Forms are received by the LHDNM on or before 14 August 2005.

The Institutes would like to confirm that the above administrative concession is still applicable for this year. Hence, no penalty will be imposed on taxpayers if the Forms C and R of the December year-end companies are received by the LHDNM on or before 14 August 2006.

JAWAPAN:

Syarikat dikehendaki mengembalikan* Borang C *dan* Borang R *mengikut tarikh yang ditetapkan oleh undang-undang.

Sebagai konsesi, penalti tidak akan dikenakan sekiranya borang nyata diterima dalam tempoh 14 hari dari tarikh terakhir untuk pengembalian borang nyata. Untuk borang nyata yang diterima selepas tempoh 14 hari tersebut di mana penalti telah dikenakan, rayuan boleh dipertimbangkan jika dapat dibuktikan bahawa ia dihantar pada atau sebelum tarikh terakhir untuk pengembalian borang nyata.

Layanan yang sama terpakai untuk bayaran baki cukai pendapatan di bawah seksyen 103(1) Akta Cukai Pendapatan 1967.

2.15 Companies under Liquidation

2.15.1 Issuance of clearance letter (refer to Minutes of Operations Dialogue held on 15 April 2002)

During the dialogue with the Operations Division of the LHDNM held on 15 April 2002, the LHDNM stated that instructions would be given to the assessment branches to expedite the issuance of clearance letters for companies under liquidation.

However, members of the Institutes have reported that the situation has not improved over these years and they are still experiencing delays from the Assessment Branch to obtain clearance letter for companies under liquidation as a result of Members' Voluntary Liquidations or strike-off cases under Section 308 of the Companies Act, 1965. Undue delay of the issuance of the clearance letter only increases the compliance costs of the taxpayer.

In this regard, the Institutes would like to propose that the clearance letter be issued within one month from the date of the application to the Assessment Branch, failing which a NIL deemed assessment will be treated as the final clearance letter from the LHDNM.

JAWAPAN:

Pihak Persatuan diminta memberikan butiran sekiranya masih terdapat kes-kes kelewatan dalam pengeluaran surat penyelesaian.

2.15.2 Requirement to maintain records

Normally, books and records will be destroyed within a short period of time after liquidation or strike-off of a company as there are no funds to store such records once the entity is liquidated.

In view of the above, the Institutes would like to request for an exemption from the requirement of maintaining books and records of a liquidated company.

JAWAPAN:

Rekod-rekod syarikat yang telah dibubarkan hanya boleh dimusnahkan lebih awal sekiranya semua urusan berkaitan cukai pendapatan syarikat telah diselesaikan. Jika tidak, keperluan menyimpan rekod perlu dipatuhi seperti biasa.

3.0 Isu-isu Tambahan daripada MIT / MIA / MICPA

3.1 Delay in issuance of receipt for withholding tax payment

Taxpayers have faced penalty as a result of delay in the issuance of receipt for withholding tax payment, which have been remitted to the LHDNM within one month from date of payment (via courier company and has an acknowledgement of receipt by the LHDNM).

For example, a courier company handed a cheque to LHDNM on 5 February 2005 i.e. within one month of the payment (as per acknowledgement stamp of LHDNM). However the official receipt was only issued on 4 March 2005 (one month later). Due to the delay in the issuance of the receipt by LHDNM, a notification was issued by LHDNM on 16 January 2006 and penalty for late payment was imposed on the taxpayer.

Such incident has caused considerable inconvenience to taxpayers as the taxpayers had to retrieve their records/ documents in order to prove that the withholding tax was paid on time. Taxpayers have also experienced penalties imposed for alleged late payment which took place many years ago (in some instances more than 8 years ago). Obviously, the taxpayers would not be able to remember the facts or could not locate the documents and thus, are forced to pay the penalty.

The Institutes would like to propose that the LHDNM:

(a) Issue receipts for withholding tax immediately on payment of the withholding tax

(b) Do not open old cases for the imposition of penalty for genuine cases.

JAWAPAN:

(a) ***Sekiranya bayaran dibuat di kaunter bayaran* LHDNM*, resit rasmi akan dikeluarkan pada hari bayaran itu dibuat. Apabila bayaran diterima melalui pos, "time-lag" kadangkala berlaku di antara tarikh penerimaan dokumen dan tarikh resitan kerana masa diperlukan untuk memproses dokumen yang diterima dengan banyak melalui pos. Akan tetapi, sebarang kenaikan cukai kerana lewat bayaran adalah berdasarkan tarikh penerimaan dokumen dan bukannya tarikh resitan.***

(b) ***Kes lama yang disemak semula dan dikenakan penalti kerana lewat bayaran boleh dirujuk kepada* LHDNM *untuk pertimbangan berdasarkan fakta kes.***

Semakan semula kes lama dihadkan kepada tempoh 7 tahun dan pihak* Persatuan *boleh merujuk kepada* LHDNM *jika terdapat kes yang disemak semula berhubung cukai pegangan yang telah dibayar lebih daripada 7 tahun dahulu.

3.2 Repayment cases (due to section 110 set-off)

When carrying out desk audits for repayment cases, the LHDNM had requested taxpayers to submit photocopies of the Form BE, among other items.

The Institutes wish to clarify the procedure undertaken by LHDNM in processing repayments arising from S110 set-off and the need for the Form BE to be submitted again. The Institutes are of the view that taxpayers should not be made to re-submit a photocopy of the Form BE as the original form has already been submitted to the LHDNM before.

JAWAPAN:

***Sila rujuk jawapan untuk* Perkara 2.5.**

4.0 Isu daripada MAICSA

Employee Share Option Scheme Benefit
Public Ruling No.4/2004 dated 9/12/2004
Effective from Year of Assessment 2004

IRB Ruling

Employer is required to deduct PCB on the benefit that arises from ESOS in the month the option is exercised based on PCB schedule. However, employee has the option to pay the tax by instalments through PCB **up to a maximum of 12 months** from the month in which the option is exercised.

If employee chooses to pay by himself the tax at the end of the year, **employer** must ensure that the election made by employee is done in writing.

Issues/problems faced by employer

The provision of a variable number of instalment payment options to employee would cause much difficulty to employer in monitoring PCB deductions, especially when there are multiple options exercised during the month or in the same year with the number of instalment varies for each exercise of options.

In addition, where the PCB deductions spill over to the next calendar year, the employee would have difficulty in determining the balance of tax payable when the Form BE is filed with the IRB in April the following year besides creating administrative work to the employer.

Proposal

IRB to waive the requirement to deduct PCB in respect of tax liability arisingfrom the exercise of ESOS. Employee should be required to pay tax arising from the exercise of ESOS at the time Form BE is filed. This is to provide time to the employee to cash out part of their investment to pay tax. With this procedure, no time and resources are wasted on modifying the payroll system and monitoring of PCB deductions.

Catatan Tambahan:

Pihak Persatuan menyuarakan kesukaran majikan untuk melaksanakan tanggungjawabnya mengikut Ketetapan Umum tersebut terutamanya berhubung ESOS yang ditawarkan oleh syarikat asing (misalnya syarikat induk) di luar Malaysia. Ini adalah kerana tiada mekanisme yang mewajibkan pekerja untuk memberitahu majikannya bila haknya dilaksanakan di bawah opsyen tersebut. Oleh kerana ESOS berkenaan bukan ditawarkan oleh majikan di Malaysia, maka ia tidak dilaporkan dalam penyata pendapatan (Borang EA) pekerja.

JAWAPAN:

LHDNM ***berpendapat bahawa majikan di Malaysia sepatutnya mengetahui berkenaan*** **ESOS** ***yang ditawarkan itu kerana ia berada dalam kumpulan syarikat yang sama dan berkaitan dengan penggajian yang dijalankan di*** **Malaysia.** ***Oleh itu*** **LHDNM** ***menasihatkan supaya*** **ESOS** ***tersebut dimasukkan dalam*** **Borang EA.** ***Pihak*** **Persatuan** ***diminta mengemukakan kertas kerja berkenaan isu tersebut untuk pertimbangan*** **LHDNM.**

Buat ***masa sekarang,*** **Ketetapan Umum Bil. 4/2004** ***masih terpakai.*** **Jika** ***majikan mendapati sukar untuk membuat dan memantau*** **PCB,** ***majikan digalakkan untuk membuat potongan*** **PCB** ***sekaligus sebaik sahaja opsyen dilaksanakan ataupun memastikan pekerja itu menyatakan pilihannya secara bertulis sekiranya membayar sendiri.***

5.0 Perkara Lain Yang Berbangkit

5.1 Ketetapan Umum yang baru untuk laman web

Menurut pihak Persatuan, Ketetapan Umum yang baru biasanya dimasukkan dalam laman web LHDNM selepas tarikh mula kuatkuasanya.

JAWAPAN:

LHDNM ***akan memastikan bahawa*** **Ketetapan Umum** ***yang baru dimasukkan dalam laman web pada atau sebelum tarikh berkuatkuasanya.***

5.2 Penggunaan Sijil Digital Pelanggan oleh Ejen Cukai

Ejen cukai dimaklumkan bahawa sijil digital sendiri ataupun sijil digital pelanggan boleh digunakan untuk mengemukakan borang nyata pelanggan berkenaan. Walaupun sudah ada surat kuasa perlantikan sebagai ejen cukai daripada pelanggan, ejen cukai dinasihatkan supaya mendapatkan surat kebenaran pelanggan untuk mengendalikan sijil digital mereka seperti mendapatkan sijil digital bagi pihak pelanggan dan menggunakan nombor peribadi sijil digital pelanggan untuk mengemukakan borang.

Pihak Persatuan mencadangkan supaya sijil digital khas dikeluarkan untuk membolehkan ejen-ejen cukai mengemukakan borang nyata bagi pihak pelanggan mereka. Cadangan tersebut akan dipertimbangkan.

5.3 Kadar pematuhan Borang C dan Borang R

Pihak Persatuan ditanya mengapa kadar pematuhan Borang R tidak setara dengan kadar pematuhan Borang C. Pihak Persatuan menerangkan bahawa mengikut kebiasaan, kedua-dua borang disediakan bersama.

Walau bagaimanapun, LHDNM meminta pihak Persatuan supaya memastikan Borang R dikemukakan oleh pelanggan syarikat.

5.4 Borang-borang baru untuk Relif Kumpulan

Dua borang baru diperkenalkan iaitu:

5.4.1 Borang C (RK-T) untuk syarikat menuntut; dan

5.4.2 Borang C (RK-S) untuk syarikat menyerah.

Borang-borang tersebut boleh dimuat turun dari laman web LHDNM.

5.5 Lesen ejen cukai

Pihak Persatuan meminta supaya dipercepatkan proses pengeluaran/pembaharuan lesen ejen cukai.

Tuan Pengerusi menjelaskan bahawa syarat-syarat dan pengeluaran/pembaharuan lesen ejen cukai adalah di bawah kuasa pejabat Perbendaharaan tetapi LHDNM akan cuba mempercepatkannya.

LAMPIRAN

SENARAI KESILAPAN-KESILAPAN BIASA
DALAM PENGISIAN BORANG B/BE

BIL.	BAHAGIAN DALAM BORANG B/BE 2004	KESILAPAN BIASA	
1	**Bahagian Maklumat Asas:**	(a)	Bahagian ini tidak diisi dengan lengkap. Terdapat pembayar cukai yang tidak mengisi nama dan maklumat pengenalan diri tetapi sebaliknya melampirkan penyata pendapatan (Borang EA/EC) untuk dilengkapkan oleh pegawai LHDNM.
		(b)	No. rujukan cukai tidak/silap diisi. Ia harus diisi mengikut format seperti pada surat iringan.
2	**Bahagian A:**	(a)	Ruang A2 (Negara Mastautin/Domisil) - Pembayar cukai sepatutnya mengisi kod negara dan bukannya "bilangan" mengikut susunan negara pada senarai dalam Nota Penerangan.
		(b)	Ruang A7 (Jenis Taksiran) tidak/silap diisi dan didapati tidak selaras dengan pengiraan cukai.
		(c)	Pembayar cukai dinasihatkan mengisi ruang A16 (No. Telefon) / ruang A17 (No. Telefon Majikan) supaya boleh dihubungi sekiranya terdapat kesilapan mengisi borang.
3	**Bahagian B: Maklumat Suami/ Isteri**		Bahagian ini tidak diisi walaupun ruang A4 di Bahagian A menunjukkan status "kahwin" dan pelepasan suami / isteri dituntut di Bahagian D. Terdapat pembayar cukai yang mengisi maklumat diri sendiri di Bahagian ini.
4	**Bahagian C: Pendapatan Berkanun dan Jumlah Pendapatan**	(a)	Amaun pendapatan berserta nilai sen diisi. Terdapat juga petak tambahan dilukis untuk memasukkan nilai sen.
		(b)	Ruang "Jumlah" tidak diisi.
		(c)	Ruang "Dividen" tidak diisi tetapi pelepasan seksyen 110 (dividen) dituntut atau sebaliknya.
		(d)	Pembayar cukai memilih "Taksiran Bersama" di ruang A7 Bahagian A tetapi ruang C17 / C18 (Borang BE) atau ruang C33/C34 (Borang B) tidak dilengkapkan.
		(e)	Bahagian C tidak dilengkapkan tetapi Borang EA/EC dilampirkan.
5	**Bahagian D: Pelepasan dan Pendapatan Becukai**	(a)	Bahagian ini tidak dilengkapkan tetapi resit-resit tuntutan disertakan.
		(b)	Semua pelepasan dituntut pada had maksima atau melebihi had.
		(c)	Pembayar cukai mengisi kedua-dua ruang pelepasan anak di bawah kadar 100% dan 50%.
		(d)	Pelbagai pelepasan lain dituntut di ruang D18.
		(e)	Silap pengiraan "Jumlah Pelepasan" di ruang D19.

BIL.	BAHAGIAN DALAM BORANG B/BE 2004	KESILAPAN BIASA	
6	**Bahagian E: Cukai Kena Bayar**	(a)	Bahagian ini tidak dilengkapkan.
		(b)	Silap kadar cukai pendapatan dalam pengiraan.
		(c)	Rebat dituntut walaupun tidak layak. Terdapat pembayar cukai yang menganggap lebihan rebat sebagai cukai terlebih bayar.
7	**Bahagian F: Rumusan Cukai dan Bayaran**	(a)	Bahagian ini tidak diisi.
		(b)	Lebihan rebat dituntut sebagai cukai terlebih bayar.
		(c)	Pembayar cukai mengisi jumlah PCB termasuk jumlah potongan CP38.
8	**Bahagian G: Pendapatan Tahum Kebelakangan**	(a)	Tidak dilaporkan walaupun terdapat dalam Borang EA/EC.
9	**Bahagian Akaun:**	(a)	Bahagian ini tidak dilengkapkan.
		(b)	Pembayar cukai tandatangan tetapi tidak mengisi "nama", "no. kad pengenalan" dan "tarikh" atau sebaliknya.
		(c)	Cap jari digunakan sebagai ganti tandatangan.
10	**Kesilapan Umum:**	(a)	Sebahagian borang terdiri daripada borang asal dan sebahagian lagi borang fotostat.
		(b)	Muka surat borang yang dikemukakan tidak mencukupi.
		(c)	Borang fofostat diisi dan dihantar kepada LHDNM.
		(d)	Menggunakan borang nyata tahun kebelakangan untuk melaporkan pendapatan tahun semasa.
		(e)	Menghantar borang B yang berasingan untuk jenis perniagaan yang berbeza.
		(f)	Menghantar dua borang misalnya Borang BE untuk kes tidak kena cukai dan Borang B untuk kes kena cukai.
		(g)	Mengisi jenis borang yang salah.
		(h)	Tersilap mengisi no. rujukan pembayar cukai lain.
		(i)	"Liquid paper" digunakan untuk membuat pembetulan.
		(j)	Borang diisi dan dokumen/lampiran disertakan Terdapat juga lampiran disertakan tetapi borang tidak diisi.
		(k)	Pengiraan cukai tidak diselesaikan.
		(l)	Baucar dividen tidak disertakan untuk kes pembayaran balik atau sebaliknya.
		(m)	Garisan melintang dibuat merentasi ruang-ruang yang tidak berkenaan.

B Dialogue with the Technical Department of Inland Revenue Board

1.0 A dialogue between the Technical Department of the Inland Revenue Board (IRB) and representatives of MICPA, MIA, MIT, MAICSA, MATA and MACS was held on March 15, 2006.

1.1 The dialogue was held for the following purposes:

(a) To discuss issues arising from the 2006 Budget.

(b) To discuss other technical issues submitted by MICPA, MIA and MIT.

2.0 2006 BUDGET ISSUES

2.1 Tax Treatment on Losses and Unabsorbed Capital Allowances

Note by the IRBM:

Pleased be informed that the Honourable Ministry of Finance (MOF) has decided that the procedure on the implementation of the tax treatment of brought forward losses and unabsorbed capital allowances is as follows:

i. A company with a substantial change in ownership will be allowed to carry forward its accumulated losses and unabsorbed capital allowances if there is no substantial change of the ultimate shareholder.

For the purpose of confirmation that there is no substantial change of the ultimate shareholder, the following procedure will be used:

Type of Company	Confirmation of no substantial change of ultimate shareholder
Public listed companies (PLC).	- External auditor of the PLC; or - Secretary of the PLC In the absence of the above, - Audit committee of the PLC; - Financial Controller of the PLC; or - Director of the PLC.

Non-public listed Companies (non-PLC)	- A company incurring losses provides a list of the ultimate shareholder and proves that there is no substantial change of the ultimate shareholder; or Confirmation of no substantial change of the ultimate shareholder by: - External auditor of the company incurring losses; or - Secretary of the company incurring losses; or
	In the absence of the above:- - Audit committee of the company incurring losses; or - Financial controller of the company incurring losses; or - Director of the company incurring losses.

ii. A company with a substantial change of the ultimate shareholder for commercial purposes and not for tax driven will be considered by MOF through his power under section 33(3) Finance Act 1006 if the substantial change is the result of the following activities:

a. Privatisation of government owned company.

b. Nationalisation.

c. Government's directive on reorganisation, restructuring, mergers or takeover of a company.

In line with the MOF directives, some of the IRBM's response on the same issue are overtaken by event and therefore no responses should be minuted.

2.1.1 A continuity of ownership test of more than 50% in shareholding is now proposed in order for accumulated losses and capital allowances to be carried forward. Such tests can be administered for non-listed companies.

The Institutes would like to seek clarification on the position to be taken in respect of public listed companies and the procedures to be used to monitor such changes in view of the difficulties in tracking shareholdings in listed companies.

***Answer*:**

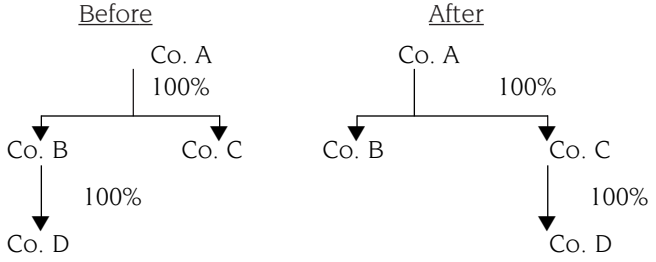
Refer to the above note.

2.1.2 The following subparagraph 5B(b) of Section 44 has been proposed in the Finance Bill 2005:-

"shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company".

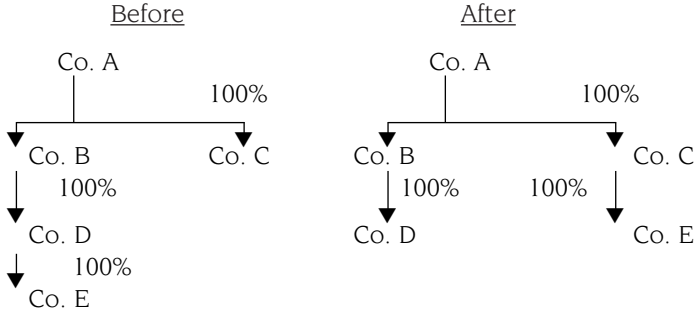
The Institutes would like to seek clarification on the above i.e. how many corporate tiers are to be examined and also confirmation relating to the following scenarios:

Scenario 1



Shares in Co. D held by or on behalf of Co. B shall be deemed to be held by the ultimate shareholder of Co. B (which is Co. A). Therefore, accumulated losses and unabsorbed capital allowances can be carried forward following the transfer of Co. D shares from Co. B to Co. C as there is no substantial change in shareholding of Co. D i.e. the ultimate holding company is still Co. A.

Scenario 2



The transfer of Co. E shares from Co. D to Co. C, does not alter the ultimately wholly owned company (i.e. Co. A). In view of the fact that the ultimate shareholder is the same, the provision should not be applied for such internal restructuring exercises.

The insertion of sub-sections 5A-5D to Section 44 of the Income Tax Act (the Act) has the effect of disregarding unabsorbed losses and capital allowances even in genuine cases of restructuring within a group of companies. This is due to the operation of Section 44(5B)(b) which states that shares in the (loss) company held by or on behalf of another company (i.e. shareholder of the loss company) shall be deemed to be held by the shareholders of the last mentioned company (i.e. shareholder of the loss company).

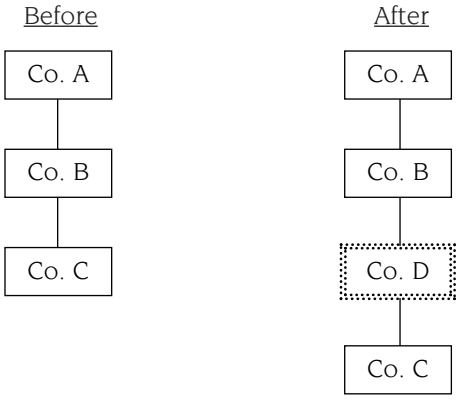
In Scenario 2 above, (assuming all companies are 100% owned), applying Section 44(5B)(b), the shareholders of the loss company i.e. Co. E, before the change in shareholding, are Co. D and Co. B, and after the change in shareholding, are Co. C and Co. A. The losses and capital allowances are restricted notwithstanding the restructuring of Co. E within the Group of Companies.

***Answer*:**

Refer to the above note.

2.1.3 The Institutes wish to reconfirm whether the tax changes will be applied (in Scenario 3 below) to a company (Company C) where there is a change in its immediate holding company (from Company B to D) following an internal group restructuring to achieve efficiency within the group while the company concerned (Company C) is still owned by the same ultimate holding company (Company A) as illustrated below (in other words, will Company C be deemed to have a substantial change in its shareholding):

Scenario 3



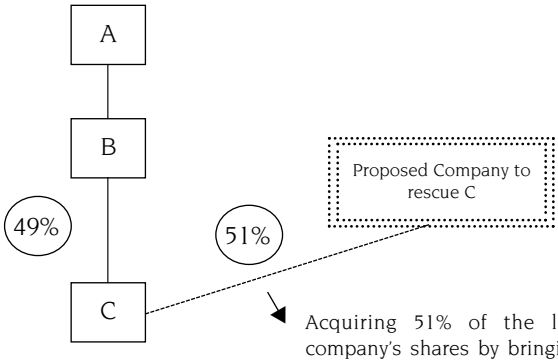
***Answer*:**

Refer to the above note.

2.1.4 Sub-sections 5A-5D of Section 44 of the Act has the effect of curtailing internal restructuring of companies for group efficiency.

The Institutes are of the opinion that these provisions should not apply to situations of internal restructuring (as in Scenario 4 below) where the ultimate ownership of the shares after the transfer remains unchanged. The proposed legislation should only be applied to those exercises which seek to obtain a tax advantage by acquiring a loss-making company without valid commercial justification. However, it should not deter a genuine turn-around exercise to rescue a loss-making company as illustrated below:

Scenario 4



***Answer*:**

Refer to the above note.

The Institutes also wish to seek confirmation of the following:

(i) whether the Minister of Finance will consider redrafting sub-sections 5A-5D in Section 44 to exclude genuine restructuring schemes such as those mentioned above?

(ii) will each case of genuine restructuring require the Minister to consider an application under Section 44(5D)?

(iii) whether the proposed legislation would be applied if there is a change in substantial shareholding during a pioneer period.

(iv) whether the IRB will issue any guidelines to explain and illustrate the various scenarios on the substantial change in ownership of the shares in a company and when would such a guideline be issued

Answer:

(i) Refer to the above note.

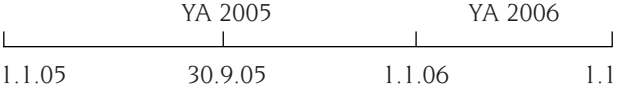
(ii) Refer to the above note.

(iii) The amendment will not be applicable during the pioneer period.

(iv) Public Ruling will be issued on this topic as soon as possible.

2.1.5 Clause 10(2)(c) – Transitional provision of the Finance Bill 2005 provides that : -

"where the basis period of a company for the year of assessment 2005 ends on or after 1 October 2005, the last day of the basis period for that company for the year of assessment 2005 shall be deemed to be 30 September 2005."



It appears that a change in shareholding from Shareholder X to Shareholder Y on say, 1.11.05 results in the losses for year of assessment (YA) 2005 (1.1.05 to 31.12.05) being ineligible to be carried forward to year of assessment 2006 as the shareholding on the last day of the basis period for YA 2005 (i.e. deemed 30.9.05) is not substantially the same as the shareholding on the first day of the basis period for YA 2006 (i.e. 1.1.06). The Institutes seek a confirmation of this.

***Answer*:**

Refer to the above note.

The above provision results in this new "rule" being applied to acquisitions of loss companies on a date after the end of the year of assessment 2005 (which is before 30 September 2005), but before the release of the Finance Bill 2005 on 30 September 2005.

For example,

- Co. B genuinely acquired Co. C, a loss company, from Co. A on 1 September 2005 when the share sale agreement was executed.
- Co. B and Co. A are not related.
- Co. C's basis period for YA 2005 ended on 30 June 2005 (financial year ended 30 June 2005).
- Co. C had unabsorbed losses and capital allowances in YA 2005.

Applying the provision, Co. C's losses will no longer be available for use from YA 2007 onwards.

Co. B is prejudiced as it acquired the company in good faith and without knowledge of the losses not being available for utilisation under the new provision. The new proposed provision thus has an element of retrospectivity which can certainly affect the integrity of the tax system.

In addition, the agreement to acquire a loss company could have been made on 1 September 2005 but the transfer of shares actually occurred later, say on 31 October 2005. It would thus appear that such a transaction would be affected by the new provision.

The Institutes wish to appeal to the Minister of Finance to:

(i) Consider redrafting the special provision relating to Section 44 to avoid acquisition of companies such as the above that took place before the release of the Finance Bill 2005.

(ii) Consider favourably an application under Section 44(5D) for acquisitions such as the one mentioned above.

***Answer*:**

Refer to the above note.

2.1.6 Consider the following scenario:

Dates	Shareholders of Co E
30.9.05	A:B (50%:50%)
1.1.06	A:B (1%:99%) - arising from allotment of additional shares to B

The Institutes wish to seek confirmation that the change outlined in the above example does not constitute a substantial change in the shareholding of Co E as the paid-up capital of Co E is held by the same persons on both dates.

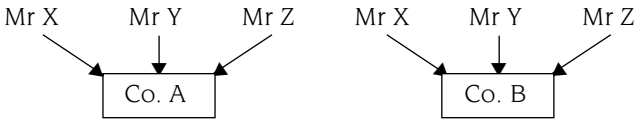
***Answer*:**

The IRBM clarified that the test to determine the existence of a substantial change is whether 50% of the company's shareholding is held by the same shareholder on both dates. Therefore, the above scenario does not constitute a substantial change since both the shareholders are the same before and after the allotment of additional shares to B. There is only a change in the percentage of shareholdings but the common shareholders collectively still hold more than 50% of the shares in the company.

2.1.7

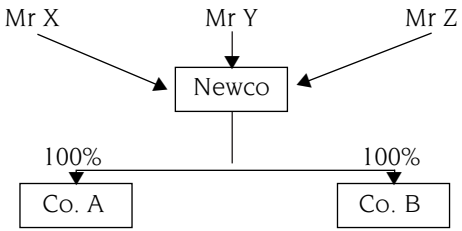
Before Restructuring

Co. A - Shares held by Mr X, Mr Y and Mr Z equally
Co. B - Shares held by Mr X, Mr Y and Mr Z equally



After Restructuring

NewCo is formed to acquire the shares of Co A and Co B. The consideration is by issuance of NewCo's shares to Mr X, Mr Y and Mr Z.



The Institutes wish to seek confirmation that the above restructuring exercise does not constitute a substantial change in the shareholding of Co. A and Co. B.

***Answer*:**

Refer to the above note

2.1.8 It has also been proposed under Section 44(5D) of the Act that the Minister may, under special circumstances, exempt that company from the continuity of ownership test. In cases of genuine acquisitions of ongoing businesses (with employees, assets, liabilities, etc) by a loss making company with the intention of turning around the business, it would be unfair that unabsorbed losses and capital allowances are disallowed following changes that are essential to the future well-being of the company.

The Institutes seek clarification of the following:-

(i) the definition of "special circumstances" and the procedures for applying and hope that guidelines will be issued as soon as possible in the interest of transparency and certainty.

(ii) how fast will the exemption be granted from the date of application? To avoid any delay in the group restructuring exercise and other practical difficulties as well as administrative burden in dealing with various applications for exemption, the Institutes propose that so long as the loss-making company remains within the group before and after the group restructuring exercise, then the carry forward of losses and capital allowances should not be affected.

***Answer*:**

Refer to the above note.

2.2 Group Relief

2.2.1 Finance Bill – Clause 11 on new Section 44A(10)

"The provisions of this section shall not apply to a company for a basis period for a year of assessment where the period during which that company –

(a) is a pioneer company or has been granted approval for investment tax allowance under the Promotion of Investments Act 1986;

(b) is exempt from tax on its income under Section 54A, paragraph 127(3)(b) or subsection 127(3A);

(c) has made a claim for a reinvestment allowance under Schedule 7A;

(d) has made a claim....."

The Institutes seek clarification whether this applies to both the claimant and surrendering companies.

***Answer*:**

Yes, the relevant provision has been amended and the provision is applicable to both the claimant and surrendering company.

2.2.2 An irrevocable election to surrender or claim an amount of adjusted loss must be made by the surrendering company and claimant company in the tax return.

The Institutes are of the opinion that penalties should not be imposed where the losses claimed are adjusted by the IRB to a lesser amount in the event of a tax audit or other circumstances.

***Answer*:**

The IRBM clarified that whether the penalty will be imposed is based on the principle of whether there is an element of non-disclosure (element of tax avoidance). Generally, no penalty will be imposed on the claimant company. However, in circumstances where the claimant company has some knowledge (information) of the non-disclosure, then penalty may be impose on that company.

2.2.3 For the purpose of determining the initial tax estimate for companies with a 31 December year-end (which is due on 1 December 2005), can a company claim 50% of the current year losses of the surrendering company?

***Answer*:**

The IRBM clarified that the threshold for estimate of tax payable for companies from YA 2006 has been reduced from 100% to 85% of the estimate of tax payable for immediate preceding year of assessment. The company is allowed to make a revision within 6 months of the basis period.

2.2.4 What is the mechanism to claim or surrender the loss? Is it to be claimed or surrendered in the Form C? What is the penalty mechanism involving a surrendering company which is making losses i.e. how will this be applied considering that such a company may be a loss-making company? The Institutes wish to highlight that the IRB should take cognizance that genuine errors can occur in

the course of completing tax returns. As such, imposition of penalties should not be done without culpability being proven.

***Answer*:**

The IRBM clarified that a claim or a surrender of loss shall be made in the Form C. There will be a column for claiming the Group Relief.

Regarding the imposition of penalty, if there is an adjustment on the claimant company, penalty will be imposed on the surrendering company and the amount of penalty is equal to the amount of tax undercharged on the claimant company. Therefore, in the case of a loss-making surrendering company, penalty can still be imposed on that surrendering company even though no tax has been charged on that surrendering company. The IRBM will work on the mechanism of that penalty imposition.

2.2.5 To create a more competitive tax environment and to encourage foreign direct investment in Malaysia, the Institutes have interpreted from the proposed legislation that so long as the surrendering and claimant companies are locally incorporated resident companies and are related to the extent of at least 70%, group relief is applicable regardless whether the ultimate holding company is a non resident company or whether it is incorporated overseas.

The Institutes seek to reiterate that the fact that the surrendering and claimant companies are directly and indirectly owned by another company (which may be a non-resident foreign incorporated entity) should not jeopardize the eligibility to claim group relief under Section 44A of the Act as the section states that only the surrendering company and the claimant company needs to be resident and incorporated in Malaysia. Please confirm our understanding.

***Answer*:**

The IRBM confirmed that the conditions of a company's incorporation and resident status are applicable to both the surrendering and the claimant company. The relationship between the surrendering and the claimant company can be direct or indirect.

2.2.6 The Institutes would also like to seek clarification on the tax treatment for any consideration to be paid by the claimant company to the surrendering company for the amounts of losses to be surrendered. This would be possible where there are minority shareholders in a company. The Institutes are of the view that such payment would not be taxable on the surrendering company and consequentially will not be allowable on the claimant company as the amount represents a capital payment. This treatment is consistent with that adopted by the United Kingdom's HM Revenue & Customs.

***Answer*:**

The IRBM informed that the issue is noted and will be studied.

2.2.7 In view of the number of scenarios that may be involved in applying group relief due to different group structures, the Institutes would appreciate it if detailed guidelines can be issued to further clarify the application of the above proposal as well as the time frame within which the guideline will be issued.

***Answer*:**

The IRBM will issue a detailed guideline as soon as possible.

2.3 Flexibility in Estimating Tax Payable for Companies

It has been proposed that the initial tax estimates provided by companies be lowered from not less than 100% to not less than 85% of the preceding year's estimates or revised estimates.

The Institutes note that the Treasury has recognised the difficulties faced by businesses, especially in estimating the initial tax estimates. However, the Institutes urge the removal of the 85% restriction in order to fully promote a self assessment regime or perhaps institute a gradual reduction of the limitation in the coming years.

***Answer*:**

The IRBM responded that the above matter is a policy decision.

2.4 Tax Treatment of Small Value Assets

It is proposed that capital allowance on qualifying expenditure on small value assets be given 100% allowance provided each asset does not cost RM1,000 each. However, the total qualifying expenditure shall not exceed RM10,000.

The Institutes welcome this proposal. However, this is not in line with the original intention of the Institutes' proposal to converge the accounting and tax treatment for small value assets. In addition, the limitation of RM10,000 is considered immaterial to most organisations. In fact, the limitation will lead to higher compliance costs to monitor the movement of the small value assets and it does not reduce the administrative work in preparing tax computations.

Due to the additional work involved, the Institutes also wish to highlight the following:-

(i) We would urge the authorities to consider allowing a full deduction on such small value assets rather than merely granting accelerated capital allowances.

(ii) Alternatively, if tax deduction without any limit is not acceptable, we propose that taxpayers be given an option to either claim capital allowance on small value assets acquired in YA 2006 and thereafter based on the existing provision (i.e. normal capital allowance) or based on the proposed legislation (i.e. 100% capital allowances).

***Answer*:**

(i) The IRBM responded that the above matter is a policy decision.

(ii) The IRBM informed that taxpayers are given an option to claim capital allowance on small value assets acquired in YA 2006 and thereafter, based on the existing provision (i.e. normal allowance) or the new legislation (i.e. 100% capital allowance).

Under the Self Assessment System, whatever is claimed in the Form C reflects the taxpayer's option.

2.5 Tax Treatment of Interest Expense for Leasing Activity

It is proposed that interest expense incurred by companies undertaking both leasing and non-leasing activities be apportioned based on the respective amount of funding used. The Institutes understand that the apportionment method may be based on Bank Negara's average cost of funds formula.

The Institutes would like to seek clarification on the following issues:-

(i) how does the formula for the average cost of funds work?

(ii) as all are aware, the apportionment issue for leasing companies has been debated for a long period. To ensure that fair treatment is accorded and with the amendment taking effect from YA 2006, the Institutes would suggest that the proposal be extended, as a concession, to cases arising prior to YA 2006.

***Answer*:**

(i) The IRBM clarified that the Ministry of Finance has formulated the formula for the average cost of funds as follows:

$$\text{Average Interest Expense} = \frac{\text{Sum of (C) for the Months in the Year}}{\text{Number of Months in the Year}}$$

Where,

(C) = (a) x (b)

$$\text{(a) = Annualized Average Cost of Funds} = \frac{\text{Interest Expense for the Month}}{\text{Total Funds for the Month}} \times \frac{\text{365 Days}}{\text{Number of Days in the Month}} \times 100$$

(b) = Lease Rental Receivables Outstanding

(ii) The IRBM confirmed that the new law is applicable from YA 2006.

2.6 Investment Holding Company (IHC)

The definition of an investment holding company has been proposed to mean a company whose activities consist mainly in the holding of investments and not less than 80% of its gross income (whether exempt or not) is derived therefrom. If it is shown that it has been established between the Director General and the company for tax purposes that the company is an IHC for the basis period for any year of assessment, it shall be presumed to remain an IHC until the contrary is proved.

The Institutes wish to:-

(i) seek confirmation as to whether the transitional treatment would continue to apply to those IHCs in which rental income has been recognised as business income under Paragraph 12 of the Public Ruling 1/2004, "Transitional treatment under the Director General Ruling No.1/95" where, if a company has been treated as carrying on a business of letting properties under Director General Ruling

No. 1/95 (old Ruling), this treatment shall continue until such time the company is no longer eligible to do so under the old Ruling such as the disposal of 1 or more units of property acquired in the basis period for year of assessment 2003 or earlier (old property);

(ii) seek confirmation on the procedure and manner for a company to establish with the IRB that it is an IHC (possibly in the form of a written confirmation) and also how the contrary would need to be proved under the self-assessment system.

(iii) propose the establishment of a specific division/unit in the IRB to provide similar confirmations as required under the provisions of the Act. Such division/unit will be able to centralize the issuance of confirmations and therefore avoid differences in opinion between different branches of the IRB.

***Answer*:**

(i) The IRBM confirmed that Paragraph 12 of Public Ruling 1/2004 (PR) is not applicable to an investment holding company (IHC). It is clearly stated in that PR that the special treatment where rent can be regarded as a business source does not apply to an IHC.

(ii) Guidelines on the matter will be issued as soon as possible.

(iii) The IRBM took note of the above recommendation.

2.7 Investment Holding Company listed on Bursa Malaysia

The proposed section 60FA(2) provides that :-

"Where an investment holding company is a company resident for the basis year for a year of assessment and listed on the Bursa Malaysia in the basis period for that year of assessment, income of that investment holding company from the holding of investments in that basis period shall be treated as gross income of that investment holding company from a source or sources consisting of a business for that year of assessment."

The Institutes wish to seek clarification on the following:-

(i) whether the dividend, interest and rental income constitute separate sources of business income such that an adjusted loss in respect of dividends is not deductible against adjusted income in respect of interest or rental

income? Alternatively, does the dividend, interest and rental income constitute a single source of business income?;

(ii) whether the residual expenditure (qualifying expenditure less notional allowance) of the qualifying assets acquired and used prior to YA 2006 would be eligible to be claimed as capital allowances in YA 2006 for a listed IHC; and

(iii) how would the common expenses such as director's fees of a listed IHC be allocated if a listed IHC has two or more sources of income? Will the basis of allocation be based on the gross income of investment and other income?

***Answer*:**

(i) The IRBM clarified that dividend, interest and rental will constitute separate sources of income and the adjusted loss in respect of each source is not deductible against other sources of income.

(iii) The IRBM confirmed that the provision of paragraph 2A Schedule 3 ITA, applies.

(iii) The IRBM also clarified that the common expenses such as director's fees of a listed IHC will be allocated based on the gross income of each source of income.

2.8 Extending the Scope of Allowable Expenses for Companies

The 2006 Budget proposed that expenses incurred on audit fees by companies are to be deemed as allowable expenses for deduction in the computation of income tax.

The Institutes note that audit fees is now eligible for deduction under the proposed legislation as in the past it was only allowed under a concession given by the IRB and this concession also applied to tax fees and secretarial fees as well. The Institutes welcome the initiative to be transparent in terms of providing certainty in respect of the deductibility of such an expense. Expenses such as tax fees and secretarial fees nonetheless are necessarily incurred by companies in the course of doing business. In this respect, the Institutes would like the following to be considered:-

(i) the same treatment should be accorded to secretarial fees and tax fees. Alternatively, a confirmation is required that the concession for the deduction of such fees would continue to apply.

(ii) the term "audit fees" should apply to statutory audit fees as well as other audit fees such as special audit fees, internal audit fees, etc which are required by other legislative provisions besides the Companies Act 1965.

***Answer*:**

(i) The IRBM confirmed that the concession for the deduction of secretarial and tax fees would not be continued. Deductions given prior to YA 2006 will not be clawed back. For YA 2006, cases where a company has claimed those fees, the company must inform the relevant IRBM branch to effect an adjustment accordingly.

(ii) The IRBM also confirmed that "audit fees" will only apply to statutory audit fees.

2.9 Estimated Losses of Low Cost Housing Projects

It is proposed that in preparing the estimated tax payable for a current year, the estimated losses of low cost housing projects shall be allowed to be set off against the estimated profits of other property development projects, with effect from YA 2006.

The Institutes wish to confirm that the estimated losses of low cost housing projects are also deductible when filing the tax returns for a year of assessment. If not, this may result in a penalty for under-estimation of tax payable when filing the returns. The Institutes wish to enquire as to when the ruling will be issued.

***Answer*:**

This matter will be addressed in the Public Ruling on Property Development and Construction Contracts which has been issued.

2.10 Mergers and Acquisitions of Listed Companies

It is proposed that stamp duty and RPGT exemption be given on mergers and acquisitions (M & A) undertaken by companies listed on Bursa Malaysia.

The Institutes would like to enquire as to the scope of the M&A envisaged and whether both companies being merged require to be listed, or is it sufficient that any one of the companies be listed in order to qualify for the exemption. The Institutes are of the opinion that the M & A exercise should not be restricted to acquisition of the businesses of public listed companies. Partial acquisition which enables a listed company to grow larger by acquiring a business segment/division from another listed

company should also be considered for this incentive so long as the exercise results in improving efficiency and expansion of business activity.

The Institutes also wish to request that the IRB invites the Institutes to provide input on the above guidelines which will be drafted by the Securities Commission.

Answer:

The IRBM informed that this incentive is applicable only to Public Listed Companies (PLC). IRBM has not been contacted for any input on the preparation of the guidelines.

2.11 Extending the Scope of Allowable Expenses for REITs

It is proposed that consultancy, legal and valuation fees incurred in the establishment of REIT be allowed a tax deduction effective from YA 2006.

The Institutes wishes to seek confirmation on the following:-

(i) What type of expenses would be included? To further encourage the growth of the property sector, the deductibility of other expenses such as underwriting fees, cost of printing prospectus, etc should be allowed.

(ii) Are the expenses to be deducted at the REIT level or by the asset owner who initiates the setting up of the REIT?

***Answer*:**

(i) The IRBM confirmed that only expenses of consultancy, legal and valuation fees incurred in the establishment of REIT would be allowed a tax deduction. IRBM responded that it is a policy decision to allow these expenses only.

(ii) The IRBM confirmed that the expenses are to be deducted at the REIT level.

2.12 Review of Tax Treatment of Bonds

2.12.1 It is proposed that the tax treatment for non-financial institutions (NFIs) be streamlined to follow that of financial institutions by taxing accretion of discounts or allowing amortisation of premiums on such instruments using the accrual principle.

(i) While the Institutes welcome the streamlining of the tax treatment, there is a concern for investors who will be taxed every year on accrued income which will only be received upon maturity.

(ii) The Institutes also wish to confirm the tax treatment for NFIs which have already issued bonds or have current bond investments that straddle into the basis period for YA 2006 as outlined in the following example:

XYZ Sdn Bhd issued bonds with a nominal value of RM100 million at a discount of RM15 million in the year 2004. The bonds, with a tenure of 5 years, will mature in 2009. For accounting purposes, the discount of RM15 million is amortised over 5 years with a charge of RM3 million to the Profit and Loss account each year. For tax purposes, the amortisation of discount of RM3 million each has been disallowed as a tax deduction for YA 2004 and YA 2005. The full discount of RM15 million will be claimed as a tax deduction in YA 2009 when the bonds mature.

In view of the proposal to streamline the tax treatment for FIs and NFIs, will the amortisation of discount of RM3 million each for YA 2004 and YA 2005 be given a deduction in YA 2006 together with the RM3 million relating to YA 2006, or will the amortisation of discount of RM3 million each be given a deduction in YA 2004 and YA 2005 necessitating their prior years' returns to be re-submitted?

***Answer*:**

(i) The IRBM confirmed that the amortization of discount is on a straight line basis. Prior to YA 2006, no deduction is to be allowed. Any amortized discount made prior to YA 2006 will be allowed in the year of maturity.

(ii) The prior years' assessments will not be re-opened and therefore the balance that has accrued but not yet claimed will be allowed in a final year.

2.12.2 A detailed guideline or public ruling should be issued to clarify various matters including:

(i) tax treatment for bond issuers and investors which may consist of resident and non-resident individuals or corporate bond holders;

(ii) would the non-resident bond holder be subject to withholding tax and when and how should this be accounted for?

(iii) how should a "Zero Coupon Bond" be treated for income tax purposes? Would the discount be treated as interest? How should the individual bond holder account for the discount income earned annually for the purpose of assessing his/her tax payable?;

In view of the above issues, the Institutes propose that the bond issuer be allowed to assess/deduct the discounts/premium on an annual basis until the date of maturity of the bonds while the investor (either the resident or non-resident individual/corporate bond holder) be liable to pay tax for the total discount income earned throughout the term of the bond only upon maturity/realisation.

***Answer*:**

The guidelines will be issued to clarify the matter.

2.13 Employee Share Option Scheme

2.13.1 The term "market value" has been defined to mean –

(i) in the case of a company listed on Bursa Malaysia, the average price of the shares which is ascertained by averaging the highest and the lowest price of the shares for the day; or

(ii) in any other case, the net asset value of the shares for the day.

The Institutes wish to seek confirmation on the following:-

(i) in instances where the employees are granted stock options of companies not listed on Bursa Malaysia but which are listed on foreign exchanges such as the New York Stock Exchange or Singapore Stock Exchange, the same definition of market value for companies listed on Bursa Malaysia should apply as it would be more practical and administratively easier;

(ii) whether the proposed tax treatment also applies to other types of share schemes offered by the employer for the benefit of the employee;

(iii) the definition of "net asset value" and the method of determining the net asset value of shares for the day for shares not listed in Bursa Malaysia

We wish to highlight the potential administrative issues involved in tracking the number of shares exercised by the numerous employees, daily share prices of the company, etc.

***Answer*:**

The issues will be covered in the amended Public Ruling.

2.13.2 Whether the above proposal would be applicable to share options granted prior to year of assessment 2006 but which are only exercised by employees in subsequent years (The Institutes propose that in the interest of justice and equity, the above proposal should not be applicable to such share options to avoid any retrospective application of the proposal. Accordingly, a transitional provision to this effect should be included in the amendment act whereby such share options should be subject to the tax treatments as stated in the Public Ruling 4/2004).

***Answer*:**

The Minister has agreed that the proposal will not be applied to share option schemes exercisable prior to 1st January 2006 on condition that the option must be exercised by 31 December 2006.

2.13.3 What tax treatment should be adopted for the existing share plans which have been submitted to the IRB whereby the IRB has issued their written confirmation on the timing of taxability and taxable value? Will there be transitional guidelines issued at a later date?

The Institutes would like to know when the Public Ruling 4/2004 on Employee Share Option Scheme would be revised to take into account the new proposal.

***Answer*:**

The IRBM informed that the new legislation will be applied. Since the new legislation has been introduced, the computation and taxable benefit will be applied according to the new law. Old computation of taxability and taxable value will only be applied during the transitional period. No transitional guidelines will be issued.

2.13.4 Prior to the 2006 Budget Proposal, a taxable benefit would be reported in the year of exercise and related back to the year of grant as prior year income for taxation purposes. However, the proposed amendments require that the taxable benefit arising from share options would be reported as current year income in the year of exercise.

The Institutes wish to seek clarification whether a taxable benefit arises in a scenario where an individual is granted share options prior to his assignment in Malaysia but exercises his share options during his assignment in Malaysia.

***Answer*:**

The IRBM confirmed that a taxable benefit will be considered to arise in Malaysia where the share options are granted in respect of an employment exercised in Malaysia.

2.14 Extending the Scope of Incentives for Multimedia Activities

It is proposed that selected companies, which are undertaking ICT and multimedia activities including Regional Shared Service Centres outside the Cybercities be given the following incentives, provided they are recommended by the Multimedia Development Corporation (MDC):

(i) Pioneer Status with tax exemption of 50% of statutory income for a period of 5 years; or

(ii) Investment Tax Allowance of 50% of qualifying capital expenditure incurred within a period of 5 years to be set-off against 50% of statutory income for each year of assessment.

In this regard, the Institutes would like to enquire from the IRB as to the criteria that will be used by the MDC to recommend such companies for the above incentives.

***Answer*:**

The IRBM responded that the Malaysian Development Corporation (MDC) will determine the criteria for such incentives.

2.15 Incentive for Unemployed Graduates Training Scheme

It has been proposed that allowances given by listed companies to participants in the Unemployed Graduates Training programmes during the period from 1 October 2005 to 31 December 2008 be given a double deduction. These programmes need to be endorsed by the Securities Commission.

The Institutes would like to suggest that the scope be widened to allow non-listed companies, including the professional firms which also participate in such schemes to obtain the double deduction.

***Answer*:**

The IRBM clarified that the incentive is only applicable to public listed companies.

2.16 Scope of Individual Tax Relief for Further Education

It has been proposed that the scope of courses eligible for relief not exceeding RM5,000 per annum be extended to include any course of study up to tertiary level in any institution or professional body in Malaysia recognised by the Government or approved by the Minister, as the case may be, undertaken for the purpose of acquiring law and accounting qualifications.

The Institutes urge that the relevant authorities issue the list of institutions and professional bodies in Malaysia recognised by the Government or approved by the Minister as soon as possible. The Institutes also wish to highlight that education undertaken to obtain professional tax qualifications should be viewed as falling within the ambit of "accounting". This will encourage more persons to take up professional qualifications related to taxation especially since there is a need for more tax professionals to provide the relevant services to taxpayers under the self-assessment system of taxation.

In addition, the Institutes would like to seek confirmation on the following matters:

(i) whether all the fees charged by the approved institutions such as registration fees, student fees, administrative fees, examinations fees, revision fees and tuition fees which are incurred/expended up to the maximum of RM5,000 will qualify for the relief; and

(ii) whether the cost incurred in acquiring professional accounting qualifications by way of self-study (as is done for most professional qualifications) would be eligible for the relief.

***Answer*:**

(i) The IRBM confirmed that all fees paid for the purpose of attending the course of study excluding fees in respect of accommodation and sustenance are allowable.

(ii) The IRBM clarified that the cost incurred in acquiring professional accounting qualifications by way of self-study would be eligible for the relief. A list of professional bodies, approved in respect of this relief will be issued by Ministry of Finance.

2.17 Provision to Allow a Tax Assessment after Six Years

It has been proposed that the Director General of Inland Revenue be empowered to make assessments for income tax, petroleum income tax and real property gains tax after a period of 6 years in cases where the assessment is determined by the court or upon the withdrawal, revocation or cancellation of any exemption, relief, remission or allowance.

The Institutes would like to know the rationale and scope of the above proposal, whether it relates to a specific matter or party concerned and how this proposal is intended to be applied in future. The Institutes would also suggest that the IRB reviews and confirms all claims for relief and allowance within six years from the relevant year of assessment so as not to burden taxpayers with the need to maintain their records beyond these years in the event of a dispute.

In addition, the Institutes would like to clarify whether the number of open years is not limited to 6 years and taxpayers would need to keep their records for more than 7 years to prove compliance with the legislation. In the interest of efficiency and to maintain a business friendly environment, the Institutes are of the view that 6 years is too long a period for the IRB to raise an assessment and recover the tax after the withdrawal, revocation or cancellation of any exemption, relief, remission or allowances. It is believed that the IRB can, under self-assessment, raise such assessments much earlier than 6 years.

***Answer*:**

The IRBM clarified that the proposal will allow the IRBM to make the necessary assessments under specific circumstances and hence it would not be subject to any restriction.

The term "exemption: is intended to mainly refer to those exemptions granted by MIDA with conditions attached.

The IRBM also clarified that under normal circumstances the keeping of records is subject to section 82. In the case of raising the assessment and recovering the tax after the withdrawal, revocation or cancellation of any exemption, relief, remission or allowances, normally IRB will take immediate action.

2.18 Waiver of the Need to Gazette Tax Exemption

It has been proposed that exemption of income tax, real property gains tax and stamp duty given only on a case-to-case basis be effected without the requirement for gazette notification.

Although the Institutes appreciate the rationale of deeming that the relevant letter of exemption would be adequate for such cases due to the long delays that occur between the approval and the actual gazetting of the exemption, there is also a need to balance this administrative rationale with the need for transparency and accountability as the government gazette is for public consumption and all parties have the prerogative to be kept aware of who has been granted an exemption.

The Institutes would suggest that the proposal be withdrawn. Instead, the relevant tax authorities can be directed to accept the official letter of exemption issued by the Ministry of Finance to have the force of law instead of insisting on the actual gazette order.

***Answer*:**

The IRBM responded that the above is a policy decision.

2.19 Enhancing the Competency of Tax Agents

It has been proposed in the 2006 Budget that a person who wishes to perform tasks relating to taxation be required to obtain a tax agent licence. However, a licensed auditor who has been granted an audit licence prior to 1 January 2006 shall be allowed to continue to be a tax agent.

The Institutes welcome the move by the IRB. It is hoped that the Institutes would be involved in the transitional process. The Tax Committees of the Institutes should be allowed to send a representative to sit in the interview panel which would be responsible in determining the suitability of the applicants. In addition, we would also like to seek confirmation on our interpretation of the proposed special provision relating to Section 153 of the Act i.e. that the existing auditor who obtains his/her audit licence prior to 1 January 2006 is NOT required to apply for a tax agent licence even upon renewal of his/her audit licence in future.

***Answer*:**

The interview by the IRBM is for the purpose of recommending candidates to MOF in connection with paragraph 153(1)(c).

The IRBM confirmed that the existing auditor who obtained his/her audit license prior to 1 January 2006 is required to apply for a tax agent license upon expiry of his/her audit license.

2.20 Gazette Orders

The Institutes would like to request the authorities to stipulate a time frame for the issuance of the relevant gazette orders for the following 2006 budget proposals:

- Exemption of withholding tax on non-resident personnel providing training in the performing arts and the production of crafts
- Tax treatment on estimated losses of low cost housing projects
- Tax deductions on certain start-up expenses incurred on the establishment of Real Estate Investment Trusts (REITs)
- Industrial building allowance on buildings located at Cyberjaya occupied by MSC Companies
- Tax deduction on expenses incurred for new courses by private higher education institutions
- Tax deduction for audit fees
- Tax treatment to allow companies to carry forward unabsorbed tax losses and capital allowances incurred during the pioneer period to the post pioneer period
- Extension of application period for incentives for promoted areas
- Extending the scope of incentives for multimedia activities
- Extending the scope of incentives for private higher education institutions
- Incentive for unemployed graduates training scheme
- Incentive for industrialized building system
- Incentive for generation of renewable energy
- Incentive for conservation of energy
- Remission of stamp duty on loan instruments for small and medium enterprises

***Answer*:**

The status of the relevant gazette Orders which are under the jurisdictions of the IRBM is as follows:

Gazette Orders	Status
Exemption of withholding tax on non-resident personnel providing training in the performing arts and the production of crafts.	The relevant Order will be issued soon.
Tax treatment on estimated losses of low cost housing projects (Public Ruling).	The Public Ruling has been issued on 13.03.2006.
Tax deductions on certain start-up expenses incurred on the establishment of Real Estate Investment Trusts (REITs).	The relevant Income Tax Rules has been gazetted on 30.3.2006. Income Tax (Deduction For Establishment Expenditure Of Real Estate Investment Trusts Or Property Trust Fund) Rules 2006.
Industrial building allowance on buildings located at Cyberjaya occupied by MSC Companies.	The relevant Rules will be issued soon.
Tax deduction on expenses incurred for new courses by private higher education institutions.	The relevant Rules will be issued soon.
Tax deduction for audit fees.	The relevant Income Tax Rules has been gazetted on 30.3.2006. Income Tax (Deduction For Audit Expenditure) Rules 2006.
Incentive for unemployed graduates training scheme.	The relevant Rules will be issued soon.
Incentive for industrialized building system.	The relevant Rules will be issued soon.
Remission of stamp duty on loan instruments for small and medium enterprises.	The relevant Income Tax Order has been gazetted on 13.04.2006. Stamp Duty (Remission)(No.2) Order 2006.

3.0 ISSUES RELATING TO PREVIOUS BUDGET PROPOSALS

With reference to pages 53 to 57 of the 2006 Budget Commentary & Tax Information prepared by the Institutes (see Appendix A), the Institutes would like to enquire on the status of the issuance of statutory orders or amendment to the existing legislation (where applicable) for the previous budget proposals.

***Answer*:**

As per Appendix B attached.

4.0 OTHER MATTERS

4.1 Basis Period for First Year of Assessment

As stated in Paragraph 3.5.2 of *Public Ruling No. 7/2001: Basis Period for Business & Non-Business Sources (Companies)*, where a company commences operations and its first accounts are made up for 12 months, that accounting period is the basis period for the year of assessment in which the accounts are closed. In practice, members of the Institutes have encountered situations whereby the basis period of a newly incorporated company falls short by 9 days but such companies are required to comply with the requirement under paragraph 3.5.3 which is for accounts prepared for less than or more than 12 months and not ending on 31 December. The application of paragraph 3.5.3 would result in the overlapping of two basis periods and more time and work is required to deal with the situation in spite of the fact that the adjusted income of the second basis period will be disregarded.

In view of the practical difficulties faced by taxpayers and to achieve efficiency and effectiveness in the tax administration, the professional bodies would like to seek a concession from the IRB whereby the basis period of a company which is not less than 350 days be deemed as a completed year in determining the basis period of a company.

***Answer*:**

The IRBM responded that approval or concession will be given on a case to case basis. The approval has to be obtained from IRBM, Technical Department.

4.2 Previous Dialogues

The Institutes would also like to know the status of the issuance of public rulings or guidelines which the IRB had indicated would be issued in the previous dialogues such as the Guideline on Tax Treatment for Asset-Backed Securities which are understood to have been forwarded to the Legal Department for review as well as the Public Ruling on Section 75A of the Income Tax Act, 1967.

***Answer*:**

The IRBM took note of the outstanding guideline.

5.0 ADDITIONAL ISSUES

5.1 Carry Forward of Losses and Unabsorbed Capital Allowances

5.1.1 What is the effective date of change in shareholding for the purpose of applying the continuity of shareholding test under Section 44(5)?

a. Date of signing of S&P
b. Date of completion of S&P agreement, or
c. Date of legal transfer

***Answer*:**

The IRBM agreed that the effective date of substantial change in shareholding is the date of legal transfer i.e. actual transfer of shares where the transferred share is registered under the name of the new shareholder by the Registrar.

5.1.2 Definition of "ordinary shares" in Section 44(5C). What does the word "only" qualify or is the word redundant?

Section 44(5C)
I*n subsection* (5B), *"ordinary share" means any share other than a share which carries only a right to any dividend which is of* .....

The words "..., share *which carries only a right to any dividend* .." could mean that the shareholder only has the right to dividends and not any other rights. Does the definition only exclude shares which carries only one right? However, shares have a whole host of rights attached. Clarification is required from the IRB as to what shares are intended to be excluded from the definition.

***Answer*:**

The above definition of ordinary shares is intended to exclude preference shares.

5.2 Group Relief

Commercial loan is defined in Section 44A(12) as:-

"any borrowing which entitles the creditor to any return which is of only –

i. a fixed amount or at a fixed rate per cent of the amount of the borrowing;
ii. or of a fixed rate per cent of the profits of the company."

The Institutes would like to seek confirmation whether the following loans would qualify as commercial loans:-

(a) Loan at floating rate e.g. overdraft with floating BLR,
(b) Loan at "fixed rate + BLR".

***Answer*:**

The IRBM confirmed that the above will qualify as commercial loans.

5.3 Investment Holding Company (IHC)

The Institutes would like to seek further clarification on the following matters:

- Whether the definition would be applicable to special purpose financing vehicles incorporated solely for a particular exercise such as assets backed securities.
- Should the definition be extended to these special purpose financing vehicles, would the PU orders (such as Income Tax [Deduction for Expenditure on Issuance of Asset Backed Debt Securities] Rules 2003) be amended as the said PU order currently grants deductions on certain expenses in ascertaining the adjusted business income of the special purpose vehicle.

***Answer*:**

The IRBM responded that the issue will be clarified in the guidelines.

5.4 Investment Holding Company listed on Bursa Malaysia

The new section 60FA(3) provides that any unabsorbed capital allowance will not be allowed to be carried forward to subsequent years of assessment. Upon disposal of the asset in a subsequent YA, there would be practical problems in calculating the capital allowance (CA) apportioned to and claimed by the respective deemed business income sources in order to determine the correct balancing adjustments (balancing charge)

to be made. Part of the apportioned capital allowance may not have been fully absorbed by the respective deemed business income and tracking the actual CA absorbed for a particular asset would be very cumbersome.

***Answer*:**

The IRBM responded that the issue will be clarified in the guidelines.

5.5 Review of Tax Treatment of Bonds

In the 2006 Budget, it was proposed that equal tax treatment be accorded to non-financial institution and financial institution on the issuance of bonds i.e. to adopt accrual principle for tax treatment on discount and premium.

It is presently unclear how this will apply to non-financial institution i.e. investment holding company, special purpose vehicles etc. The Institutes are of the view that further amendment to the law or Ruling should be issued to clearly implement the proposal.

***Response*:**

The IRBM responded that the issue will be clarified in the guidelines.

6.0 Gazette Orders for Operational Headquarters (OHQ), Regional Distribution Centres (RDC) and International Procurement Centres (IPC)

6.1 At present, the concept of an OHQ does not exist in the Income Tax Act (ITA), 1967 following the removal of the previous Section 60E. It is important that the new tax provisions (via a gazette order) for OHQs be enacted as soon as possible, as presently OHQs could technically be taxed at 28% based on the existing tax laws. The treatment of brought forward losses of OHQ from qualifying and non-qualifying service is also not provided for in the legislation. Incentives for Regional Distribution Centres and International Procurement Centres as announced in the 2003 Budget have yet to be legislated. The Institutes would like to highlight that the undue delay in the enactment of the above incentives may give a negative impression of the Malaysian legislative system in the eyes of foreign investors.

In this respect, the Institutes would like to urge that the issuance of the gazette orders for the above incentives be expedited. In addition, the Institutes would also like to know the time frame for the issuance of such gazette orders.

***Answer*:**

Exemption Orders for OHQ, RDC and IPC have been gazetted on 25.08.2005.

OHQ - Income Tax (Exemption) (No. 40) 2005

RDC - Income Tax (Exemption) (No. 41) 2005

IPC - Income Tax (Exemption) (No. 42) 2005

6.2 It was mentioned in an earlier Operations Dialogue held on 25 March 2003 that, pending the gazette of the relevant order, IRB will accept a NIL estimate for purposes of the CP204 submission for an OHQ. Subsequent to this, clarification has been sought from the Technical Division on the legal position/status and a member was informed that a NIL estimate is not accepted as the OHQ would be subject to a 28% tax rate since an exemption order has not been gazetted. This has resulted in tax being paid when it should not have been paid.

The Institutes would like to seek the IRB's confirmation on this matter.

***Answer*:**

The issue raised has been overtaken by events.

6.3 The Institutes would also like to know the status of the issuance of statutory orders or amendments to the existing legislation (where applicable) for the previous budget proposals as listed in the minutes of the previous technical dialogue on 20 October 2004 as follow:

- The income tax exemption order for the income derived from repair and maintenance activities for luxury boats and yachts in Langkawi.
- The income tax rules for the accelerated agriculture allowance on qualifying capital expenditure incurred by a non-rubber plantation company in the preparation of land, planting and maintenance of rubber wood cultivation.
- The income tax rules for a company that invests in a wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land.
- The income tax rules for expenditure incurred by a company for drafting the individual Corporate Knowledge based Master Plan.

- The income tax exemption order for group relief under pre-package incentives i.e. forest plantations and selected products such as biotechnology, nanotechnology, optics and photonics.
- The income tax exemption order for the pre-package incentive scheme for pioneer status with 100% exemption for 10 years or investment tax allowance of 100% for 5 years.
- The income tax exemption order for the value of increased exports of locally produced products exported by hypermarkets and direct selling companies.

***Answer*:**

The status of issuance of statutory Orders or amendment to the existing legislation is as follows:-

Orders	Status
The Income Tax Exemption Order for the income derived from repair and maintenance activities for luxury boats and yachts in Langkawi.	**Under discussion (awaiting information from MOF).**
The Income Tax Rules for the accelerated agriculture allowance on qualifying capital expenditure incurred by a non-rubber plantation company in the preparation of land, planting and maintenance of rubberwood cultivation.	**Under discussion (awaiting guidelines from the relevant Ministry (Kementerian Perusahaan Perladangan & Komiditi).**
The Income Tax Rules for a company that invest in the wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land.	**Under discussion (awaiting guidelines from the relevant Ministry (Kementerian Perusahaan Perladangan & Komiditi).**
The Income Tax Rules for expenditure incurred by a company for drafting the individual Corporate Knowledge-based Master Plan.	**Under discussion (awaiting information from MOF).**
The Income Tax Exemption Order for group relief under pre-package incentives i.e. forest plantations and selected products such as biotechnology, nanotechnology, optics and photonics.	**In the process of drafting.**

The Income Tax Exemption Order for the pre-package incentive scheme for pioneer status with 100% exemption for 10 years or investment tax allowance of 100% for 5 years.	**The relevant Exemption Order have been gazetted on 23.03.2006.** **Pioneer Status – Income Tax (Exemption) (No. 11) 2006.** **Investment Tax Allowance – Income Tax (Exemption) (No. 12) 2006.**
The Income Tax Exemption Order for the value of increased export of locally produced product exported by the hypermarket and direct selling companies.	**Under discussion (awaiting guidelines from relevant Ministry – Kementerian Perdagangan Dalam Negeri & Hal Ehwal Pengguna).**

6.4 The Institutes would also like to know the status of the issuance of public rulings or guidelines which the IRB had indicated would be issued in the previous dialogues such as the Guideline on Tax Treatment for Asset-Backed Securities and the Public Ruling on Section 75A of the ITA .

***Answer*:**

IRBM took note of the outstanding guidelines.

7.0 Permitted Expenses

Pursuant to Section 60F of the ITA, 1967, permitted expenses refers to expenses incurred by an investment holding company in respect of secretarial, audit and accounting fees, telephone charges, printing and stationery costs and postage.

With reference to the minutes of the Technical Dialogue on 18 July 2003, the IRB confirmed that taxation fees i.e. fees relating to filing and preparing tax computations are allowed to be included as part of the permitted expenses under Section 60F. However, in practice, this treatment is not adopted uniformly. The IRB is not consistent in its treatment of certain expenses for the purposes of determining 'permitted expenses'.

In this regard, the Institutes propose that the legislation be amended to include tax fees as well as bank charges as part of the permitted expenses for investment holding companies, closed-end funds, unit trusts and property trusts under Section 60F, 60H and 63B of the ITA, 1967 as these expenses are essentially a part of the administrative expenses incurred in maintaining an office/carrying on operations.

***Answer*:**

IRBM has no objection to the Institutes' proposal to amend the law. However, it is up to the Ministry of Finance to accept the proposal.

8.0 Public Ruling 1/2004: Income from Letting of Real Property

8.1 With regard to the Public Ruling 1/2004, it is noted that:

a. the existing "quantitative" criteria is applicable only to companies and not to individuals; and

b. the "quantitative" criteria applicable to companies excludes an investment holding company or a company limited by guarantee as provided under Paragraph 5 of the said Public Ruling.

Since the treatment of rent as a business source pursuant to Paragraph 5 of the Ruling only applies to companies, an individual who derives rental income without the provision of any ancillary services will not be entitled to treat the rental income as a business source, notwithstanding the number of units of properties owned.

In this regard, the Institutes would like to urge the IRB to revise the Public Ruling 1/2004 to extend the "quantitative" criteria to individual taxpayers and all non-corporate organisations such as associations. In addition, the professional bodies would like to seek clarification on the reason for an investment holding company that meets the "quantitative" criteria being excluded from applying the Public Ruling.

The Institutes would also like to seek clarification on the tax treatment where an individual has some units for which ancillary services are provided and others for which such services are not provided. Would the total rental income be treated as a business source, or would it be considered as two sources of rental income i.e. one business and one passive? Nevertheless, the Institutes continue to hold the view that the Public Ruling should apply equally to all taxpayers.

***Answer*:**

The "Quantitative" criteria are merely a concession given to companies to avoid the problems the companies have in justifying that they are carrying on a business of letting of properties.

8.2 It is also noted that Paragraph 7.2 of the said Ruling requires that where rental income is treated as passive income (i.e. Section 4(d) income), each property is to be treated as a separate source of income. The properties are to be grouped into categories such as residential properties, shop-houses/ commercial properties and vacant land. There is arguably no basis to insist on grouping the properties based on such categories. This is in contradiction with the judgments given in the P S*ecurities and* MP H*oldings* cases.

The Institutes are of the view that all the properties should form one source. Accordingly, all expenses relating to the production of rental income would be deductible. We would like to seek confirmation from the IRB on this matter.

***Answer*:**

Where rental income is treated as passive income (i.e. Section 4(d) income), each property is to be treated as a separate source of income. As a concession, properties are to be grouped into categories such as residential properties, shop-houses/commercial properties and vacant land.

9.0 Public Ruling 2/2004: Benefits-in-Kind (BIK)

As stated in the letter issued by the IRB to the Malaysian International Chamber of Commerce and Industry (MICCI) dated 12 March 1998 in respect of BIK, the Institutes understand that monthly subscription fees paid for a corporate membership (granted by an employer to an employee) is exempt from tax in the hands of the employee. If the employer pays monthly subscription fees for more than one corporate membership, then only the highest monthly subscription fee will be exempted in the hands of the employee. However, such an exemption has been withdrawn as stated in the Addendum to the Public Ruling 2/2004, which was issued on 20 May 2005 (but only came to the knowledge of the Institutes on 30 May 2005). The professional bodies are of the opinion that at least one of the monthly subscription fees (the highest) paid by the employer for senior executives to utilise the corporate membership of clubs in discharging/fulfilling the companies' objectives should continue to be exempted.

In this respect, the Institutes urge that at least one of the monthly subscription fees (the highest) for a corporate membership (granted by an employer to an employee) be stipulated as an exempt item in the Public Ruling 2/2004 as per the previous treatment. It is also noted that the withdrawal of

the IRB's letter dated 12 March 1998 to the MICCI had not been highlighted to the Institutes and practitioners until the issuance of the Addendum to the Public Ruling 2/2004. Hence, tax practitioners are not aware of any change and it is inappropriate to force taxpayers/tax agents to comply with the addendum to the said public ruling retrospectively starting from 8 November 2004. In this regard, the Institutes expect, in the interest of professionalism, that any previous decision made by the IRB to grant a concession should continue to apply unless there is a valid rationale for withdrawing the concession. EA forms and Form BEs have been filed this year in compliance with previous practices. Is the IRB expecting that the taxpayers (who are affected by the withdrawal of the concession) revise their self-assessed returns? In the interest of justice and fair play, it would only be logical for the withdrawal of the concession to apply for the tax returns that would be submitted for Year of Assessment 2005. The Institutes thus seek clarification on this recent development.

***Answer*:**

The IRBM is agreeable that the addendum to the said Public Ruling shall be effective in YA 2005.

10.0 Deductibility of BIK Provided to Employees and Family Member

Where an employer contractually provides an employee with benefits-in-kind as part of the terms of employment of the individual, the cost of providing such benefits should be deductible to the employer, pursuant to Section 33 of the ITA, unless a deduction is specifically prohibited under Section 39. For example, where an employer provides medical insurance coverage for an employee and his family (spouse and children) as per the employment contract, the cost of providing this medical insurance should be deductible pursuant to Section 33. The Institutes have been made aware of instances where the IRB has disallowed such costs on the basis that the expenses are "private".

The Institutes would like to seek confirmation that a deduction should be allowed where the employer and employee are not 'connected persons' and such benefits like medical insurance are provided as part of the employment contract and should be viewed as part of the necessary costs of business incurred to have a stable, productive workforce. To the extent that the parties are connected, then as long as the employment contract is structured on an arm's length basis, such costs should

continue to be deductible, unless specifically prohibited as mentioned above. Overzealous interpretation of legal provisions must be curtailed and decisions must be made based on the actual facts of the case.

***Answer*:**

Any expenditure incurred by an employer in providing benefits to its employees qualifies for deduction in ascertaining its adjusted income from business except where the expense is specially disallowed under section 39.

In the case of a partnership or a sole-proprietorship, any benefits to the partner of the proprietor will not qualify for deduction as it is private in nature.

11.0 Public Ruling 3/2004: Entertainment Expenses

11.1 Section 39(l)(l) of the ITA, 1967 provides that inter alia:-

"a sum equal to fifty percent of ***any expenses incurred in the provision of entertainment*** *including any sums paid to an employee of that person for the purpose of defraying expenses incurred by that employee in the provision of entertainment…"*

Based on the provision above, the Institutes are of the opinion that any expenses incurred in the provision of entertainment should be partially allowed as a deduction against the gross income while entertainment expenses which fall under Section 39(l)(l)(i) to (vii) of the ITA, 1967 should be allowed in full as a deduction to arrive at the adjusted income. In this respect, the Institutes would like to seek confirmation of our understanding of the above issue.

However, there are a number of restrictions imposed before an entertainment expense is allowed for deduction as provided in the Public Ruling 3/2004. As defined under Paragraph 3.2 of the ruling, "entertainment related wholly to sales" means the entertainment which is directly related to sales provided to customers, dealers and distributors excluding suppliers. In interpreting Paragraph 3.2 above and Paragraph 6.7 on the provision of entertainment related wholly to sales arising from the business, the Institutes are of the view that entertainment of clients, whether new or existing, should be wholly deductible so long as the expense is incurred in the provision of entertainment and is directly related to sales provided to customers/clients.

Pursuant to Paragraph 7 of the Public Ruling 3/2004, "*Entertainment expenses which are wholly and exclusively incurred in the production of income under subsection* 33(1) *of the* Act *and which do not fall into any of the categories of expenses enumerated in the proviso to paragraph* 39(1)(*l*) *of the* Act *would only qualify for* 50% *deduction*. *Such expenses would include the following*:

- *the expenses incurred in connection with* ***specific business transactions***;
- ***existing clients*** *or suppliers are entertained*; *and*
- *allowances paid to employees for the purposes of defraying expenses incurred by the employees in the provision of entertainment*."

As stated in a response from the IRB dated 28 February 2005, entertainment expenses incurred in connection with specific business transaction should have the following criteria:-

- Entertainment expenses incurred must originate from or be followed by a proper business discussion;
- Entertainment expenses incurred are for introducing a new product or retaining the existing business relationship; or
- Consultation related to the taxpayer's business must exist.

The Institutes are of the opinion that the above criteria for entertainment expenses incurred in connection with specific business transaction are related wholly to sales and hence should qualify for a 100% deduction instead of a 50% deduction.

In addition, the Institutes would also like to highlight that entertainment of existing customers is part of a company's business activity to secure business and sales and a segregation between entertainment of new and existing clients would prove commercially and administratively impractical. The Institutes would also like to enquire about the definition of "specific business transactions".

***Answer*:**

Generally, pursuant to subsection 33(1) of ITA, any expenditure incurred wholly and exclusively in the production of income is allowable as a deduction from the gross income. Thus any entertainment, as defined in section 18, must be incurred wholly and exclusively in the production of income, but 50% of such expenditure would not qualify for deduction pursuant to paragraph 39(1)(*l*)unless such expenditure falls under the exceptions [proviso (*i*) to (*vii*)] of that paragraph.

There is no definition of "specific business transaction". However, the IRBM has set out the criteria of entertainment expenses incurred in connection with specific business transaction via letter dated 28 February 2005.

11.2 As illustrated in Example 4 of the Public Ruling, the entertainment expenses incurred on the light refreshments by Syarikat Top Auto Service for its customers (who would be existing clients) while waiting for their cars to be serviced, would qualify for a full deduction under proviso (vii) of paragraph 39(1)(*l*) of the Act, as it is related wholly to sales arising from the business.

In view of the above, the Institutes would also like to seek clarification on the following matters:

- whether the treatment for entertainment expense will be different if the entertainment is provided to a customer after the sale has been concluded, for example, the owner of Syarikat Top Auto Service took the customer out for lunch after the car was serviced as it was almost lunch time; in this case, since a sale had been concluded, the expense should qualify for a full deduction even though the customer is an "existing client".
- whether entertainment of potential customers, such as meals provided by a property sales agent to his potential house buyers, which may not result in a sale transaction, qualifies for a fifty per cent (50%) deduction? What if there is a successful sale concluded?
- whether entertainment expenses incurred on an existing client of a professional accounting services firm (which is providing monthly accounting services for a year) will be considered as entertainment related wholly to sales (as the client has signed a contract or letter of engagement for a year) and thus be allowed a 100% deduction; and
- whether general gifts such as hampers and sponsorship of a client's annual dinner either in cash or by way of providing lucky draw gifts (which do not carry any logo of the business) qualify for a 50% deduction.

***Answer*:**

Issue raised	Answer
Whether the treatment for entertainment expense will be different if the entertainment is provided to a customer after the sale has been concluded, for example, the owner of Syarikat Top Auto Service took the customer out for lunch after the car was serviced as it was almost lunch time; in this case, since a sale had been concluded, the expense should qualify for a full deduction even though the customer is an "existing client".	50% deduction: entertainment provided after the sale has been concluded is not entertainment which is related wholly to sales. Therefore it is not entitled for 100% deduction.
Whether entertainment of potential customers, such as meals provided by a property sales agent to his potential house buyers, which may not result in a sale transaction, qualifies for a fifty percent (50%) deduction? What if there is a successful sale concluded?	No deduction: No deduction is given in respect of entertainment provided to potential customer as it is not in line with the provision of subsection 33(1) of the Act.
Whether entertainment expenses incurred on an existing client of a professional accounting services firm (which is providing monthly accounting services for a year) will be considered as entertainment related wholly to sales (as the client has signed a contract or letter of engagement for a year) and thus be allowed a 100% deduction.	50% deduction: The entertainment provided is to maintain the existing business relationship.
Whether general gifts such as hampers and sponsorship of a client's annual dinner either in cash or by way of providing lucky draw gifts (which do not carry any logo of the business) qualify for a 50% deduction.	No deduction for cash: It does not in line with the definition of entertainment. 50% deduction for gifts: The entertainment provided is to maintain the existing business relationship.

Note: the answer is subject to the fact that all provisions of the Act are adhered to and the answer may differ where facts surrounding the issue raised differ.

11.3 With reference to Example 3 of the Public Ruling 3/2004, cost of travel for a family day trip provided for employees is not deductible as it is treated as leave passage under Section 39(1)(m) of the ITA.

The Institutes are of the opinion that leave passage should only refer to situations where the leave passage is included in the remuneration package provided specifically for senior management of the company as part of the staff benefits. Hence, travelling expenses incurred for a family day trip to the employee and his/her family members should not be treated as leave passage and should be allowed as a deduction.

In relation to the family day expense as discussed above, the Institutes would also like to seek confirmation that the expenses (food and drink, cost of travel and accommodation) incurred for the family of an employee is exempted from tax in the hands of the employee.

***Answer*:**

Where family day expenses include travel expenses, food and accommodation, only expenses relating to provision of food and accommodation is allowable which is not taxable in the hands of the employee. Travel expenses are not allowable expense as they are specifically prohibited under paragraph 39(1)(*m*) ITA.

11.4 Due to the confusion and difficulty in interpreting the intention of the Public Ruling, an Appendix is attached where various categories of entertainment expenses are listed together with the view of the Institutes on whether the expense is fully deductible, partially (50%) deductible or not deductible.

The Institutes seek confirmation that the categorisation is acceptable to the IRB.

***Answer*:**

The Public Ruling is issued to provide principles to the IRBM's interpretation of law whether such expenses are allowable expenses. The answer to the request to ascertain whether specific expenses are fully deductible, partially (50%) deductible or not deductible is indicated in the Appendix C attached (The answer may differ where the facts surrounding the issue raised differ). The IRBM cannot entertain such a request in future. The Institutes have to determine each issue based on the principles given.

12.0 Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2001

Pursuant to Rule 4 of the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2001, a company incorporated in Malaysia and resident in Malaysia, shall be given a deduction (for the basis period for a year of assessment) in respect of an amount equivalent to the amount of **investments made** in a wholly owned subsidiary, which is undertaking an approved food production project for which the subsidiary has been given the necessary approval.

Issue 1

The term **"investments made"** is not defined in the Rules. In a case where the investment amount for a food production project approved by both the Ministry of Finance and Ministry of Agriculture and Agro-Based Industry is RM20 million and the funding by the holding company to the wholly owned subsidiary is to be provided in the following manner:-

(a) RM5 million by way of investment in the paid up capital of the subsidiary; and

(b) RM15 million by way of a loan to the subsidiary,

it is unclear as to the amount for which a deduction would be allowed.

The Institutes are of the view that a deduction for RM20 million should be allowed. The Institutes would like to seek confirmation whether the deduction allowed under Rule 4 is equivalent to RM20 million.

***Answer*:**

New Rules has been issued on 9 February 2006 to replace the Rules 2001. The term "investment" is defined in the new Rules.

"Investment" is now defined as "an investment in the form of cash or holding of shares in a related company".

Therefore in the above example, the amount of deduction allowed is RM5 million.

Issue 2

If the term **"investments made"** is not necessarily investment in the form of paid up capital of the subsidiary, as far as the deduction from adjusted income in the basis period for a year of assessment is concerned, is the amount to be deducted equivalent to **"the amount of funding actually injected into the subsidiary in that year of assessment"** or **"the entire amount as approved by the Authorities in that year of assessment"?** This distinction is important, particularly when the project funding requirement of the subsidiary may stretch over a few years.

The Institutes would like to seek clarification on the above issue.

***Answer*:**

Refer to the new definition of "Investment" above.

Issue 3

The Rules also make no mention of the possibility of carrying forward the investment made in the basis period for a year of assessment that is in excess of the adjusted income in that year of assessment.

The Institutes would like to seek clarification that if there is insufficient adjusted income, would the excess of investment made is allowed to be carried forward to future years.

***Answer*:**

The expenditure incurred is allowable in ascertaining the adjusted income of a business. If it results in an adjusted loss, the normal provisions relating to adjusted loss is applicable.

13.0 Income Tax (Exemption) (No 13) Order 2005

13.1 According to the above exemption order, a non-resident company is exempted from payment of income tax in respect of income received from an approved MSC status company for the following:

(a) payment for technical advice or technical services;

(b) licensing fees in relation to technology development; and

(c) interest on loans for technology development.

With reference to the above exemption order, under paragraph 1(2), the order is deemed to have come into operation on 1 October 2002.

The Institutes would like to seek IRB's confirmation whether the effective date of operation of the order refers to the date services were performed or the date payment was made.

***Answer*:**

IRBM confirmed that the effective date of operation of the Order refers to the date services were performed and not the date payment was made.

13.2 The Institutes are also of the view that the provision of business process outsourcing services, sales solution services and management services to group companies is within the scope of an "approved MSC status company" in relation to the activities of regional IT solutions hub, regional internet exchange, regional data centre, regional internet data centre and regional call centre.

The Institutes would like to seek IRB's confirmation of the above view.

***Answer*:**

IRBM confirmed that it is within the scope of an "approved MSC status company". However, these companies need to adhere to the MSC approved activities as stated in the conditions of grant of MSC status.

14.0 Industrial Building Allowance

Paragraph 66 of Schedule 3 to the ITA states that, inter alia, where part of a building or of an extension to a building is used as an industrial building and the other part of the building or extension, is not so used, then if the capital expenditure incurred on the construction of the part which is not used as industrial building is not more than one-tenth (10%) of the capital expenditure incurred on the construction of the whole building or extension, the building or extension shall be treated as an industrial building. This means that if the extension to an office building within an industrial building is more than one tenth of the total extension, that portion relating to the office building is not considered as an industrial building.

The Institutes are of the view that the whole building should be regarded as industrial building since the office building or warehouse (for example) or extension thereof, form part and parcel of the operations of the company.

The Institutes would like to seek IRB's view on this and whether Schedule 3 could be amended to allow such part of the building to be claimed as an industrial building.

***Answer*:**

The law in the current provision is clear. Whether the law would be amended is a policy matter.

15.0 Reinvestment Allowance (RA)

RA is applicable to capital expenditure incurred on a factory, plant or machinery used in Malaysia by a resident manufacturing company for expansion that results in an increase in production capacity.

Lately, members of the Institutes had reported that the IRB has denied the claiming of RA by some companies based on the fact that the actual production output was low although the production capacity has increased.

The Institutes are of the view that the claiming of RA should be allowed so long as the capital expenditure incurred has resulted in an increase in production capacity regardless of whether the production capacity is fully utilised. This is because a company may invest a huge sum of money in capital expenditure to expand its production capacity of the factory, but due to unforeseeable market conditions, the company may not be able to fully utilise its production capacity as the demand for its product may have fallen.

In this regard, the Institutes would like to seek confirmation from the IRB that the claiming of RA for the purpose of expansion is based solely on the fact that the production capacity has increased instead of on the actual production output or sales volume.

***Answer*:**

RA is given for a "qualifying project (as defined in Para 8) .... in expanding & modernising ....it is not simply for any additional capital expenditure incurred on factory, plant & machinery nor for any replacement of existing plant and machinery. Hence, any project for expansion resulting in an increase of production capacity is undertaken with the purpose of increasing production output and sales.

Therefore, a company claiming RA must show an increase in actual production output. If there's no actual increase in output, the company will need to justify why the claim for RA should be considered.

In conclusion, the claiming of RA for the purpose of expansion cannot be based solely on the fact that production capacity has increased. Increased production capacity is just one of the criterias for showing expansion. (Other factors could be cheaper cost per unit, shorter production time, reduced labour).

IRBM will issue practice statement to clarify the matter.

16.0 Seminar/Course/Conference Fees

According to Section 33(1) of the Act, all outgoings and expenses wholly and exclusively incurred in the production of gross income shall be deductible. It is a common practice for companies to send their employees for seminars, courses or briefings that are intended to improve or update their knowledge or skills, which are used in the course of their employment. Such seminar/course fees would be deductible expenses for the company, for example, finance and tax-related courses for employees in the finance department, human resource-related courses for the human resource department, etc. Nevertheless, there are instances where the relationship between the seminar/course and the nature of work may not be clearly defined.

The Institutes are of the view that fire safety and disaster management conference fees incurred by a property developer company or an aquaculture seminar fees incurred by a restaurant operator should be considered as wholly and exclusively incurred in the production of gross income and therefore, tax deductible.

The Institutes would like to seek confirmation on the deductibility of these expenses.

***Answer*:**

IRBM responded that the rule of "wholly and exclusively incurred in the production of gross income" applies. The application of the rule must always relate to the core business of the company and the facts of the case.

17.0 Decisions in Tax Cases

Over the years, a number of tax cases such as the Seabanc case on guarantee fees, PCEO case on the treatment of interest income, Multi Purpose Holdings Bhd case on interest restriction, etc were brought up to the courts and the decisions had been passed by the courts in respect of the interpretation of the tax legislation. The decisions/principles established from the

tax case law and the IRB's treatment of the said issues might not be consistent. This situation creates confusion and difficulties to tax agents and taxpayers in preparing their tax computations especially under the Self Assessment System.

In view of the above, the Institutes would like to urge the IRB to issue a practice note/guideline whenever an important issue/principle is decided upon. Such information should be disseminated to the IRB's officers, tax agents and taxpayers on a timely basis so that the public knows the IRB's stand on the treatment of certain issues. Meanwhile, the Institutes would also like to seek clarification whether the IRB will apply the principles/ decisions determined in tax cases in a speedier manner.

***Answer*:**

IRBM took note of the above matter and IRBM would issue a statement on the application of the principles/decisions of important and leading cases.

18.0 BNM Guidelines on Innovative Tier-1 Capital

Bank Negara Malaysia has issued guidelines on 'Innovative Tier 1 Capital Instruments" which are hybrid capital instruments having the characteristics of both equity and debt. In Malaysia, Innovative Tier 1 Capital is defined to include (as set out in the BNM guidelines):-

"Preference shares that have additional features including moderate step-up rates and limited call provisions; and

Hybrid instruments not classified as hybrid Tier 2 capital instruments, that meet all the minimum requirements for Innovative Tier 1 capital instruments."

BNM has indicated that the issuers of such instruments are required to seek clarification from the IRB as to the tax status of such instruments.

The Institutes would like to seek clarification as to whether the IRB will be providing a set of general guidelines on the tax treatment of such instruments and on the deductibility of payments made pursuant to these instruments.

***Answer*:**

The IRBM needs to study the proposal and take note of the need to issue guidelines on the tax treatment of Innovative Tier 1 Capital instruments.

19.0 Specific Provisions for Non-Performing Loans (NPLs) in Excess of 5 or 7 years

Bank Negara Malaysia (BNM) has recently given a verbal directive to all banks to write off the NPLs that have been outstanding for more than 5 years and up to 7 years. This directive is also applicable to NPLs that have collateral (due to the long period of time for which the loans have been outstanding).

In view of this, the banks will be writing off these NPLs as specific provisions and will either book the amounts in as a Prior Year Adjustments (with consent from BNM), or as current year provisions or a mixture of both.

This write-off may not necessarily meet the deduction provisions of Section 34 of the Act as the collateral has been ignored and there could still possibly be an amount that is recoverable.

The Institutes would like to seek clarification whether a concession will be granted to the banks for any write-off that is taken under such a BNM directive.

***Answer*:**

Write-off taken under such BNM directive does not qualify as a deduction under subsection 34(2) of the Income Tax Act 1967.

20.0 Basis period for Non-Corporate Bodies

Pursuant to Section 56 of the Trade Unions Act, 1959, the secretary of the trade union shall submit the audited financial statement of a registered trade union in respect of the period of twelve months ending on the thirty-first day of March in each year before the first day of October in every year. However, as stated in Section 21 of the ITA, the basis year for a year of assessment in relation to a source of a person other than a company, trust body or co-operative society shall constitute the basis period for that year of assessment with effect from Year of Assessment (YA) 2004.

In view of the different requirement of the Acts as stated above, members of the Institutes face practical problems in complying with the requirements of filing the tax return form. As required by the Trade Unions Act, 1959, the audited accounts for a trade union have to be closed on 31 March 2004, but the Return Form T for YA 2004 is for the basis period 1 January 2004 to 31 December 2004. In most of the cases, the audited accounts for 31 March 2004 were only available in August or September 2004. In practice, it is difficult to estimate and apportion the income for the period from 1 April 2004 to 31 December 2004.

In this regard, the professional bodies are of the view that it is more practical for a trade union and any other non-corporate body to prepare their tax computations based on their financial year as the basis period for a year of assessment rather than on a calendar year basis. This will assist these taxpayers to comply fully with the filing requirements under the Self Assessment System.

***Answer*:**

The IRBM realised the problem faced. However, the prevailing provision does not allow IRBM to provide any concession. The problem faced may be resolved through amendment to the law.

21.0 Payments for Software

Payments for software may take several different forms such as payments for custom-made software or off-the-shelf software or for partial or full alienation of rights to the software. Some payments for software such as for the acquisition of shrink-wrap software should be viewed as the payment for the acquisition of a product/asset, rather than as a royalty, as is the case in several other tax jurisdictions. Other payments for software can also be distinguished from royalties. The definition of a royalty is as set out in Section 2 of the Act. Where a payment for the use of software does not allow for the use of the underlying copyright, then the payment should not be viewed as a royalty, as it will not fall within the definition of Section 2.

The Institutes would like to seek the IRB's view on the above and would also like to know whether the IRB will be issuing any guidelines on the treatment of such payments.

***Answer*:**

The IRBM took note of the need to issue guidelines on the treatment of such payments.

22.0 Dividends Received from Labuan

At present, dividends received from a Labuan offshore company paid out of income derived from an offshore business activity are exempt from tax in the hands of the recipient (Income Tax (Exemption) (No.16) Order 1991). Where the recipient is a domestic company, its shareholders would also be exempt from tax on dividends paid by the company out of dividends received from an offshore company (Income Tax (Exemption) (No.12) Order 2000). However, the 1991 Order referred to above does not entitle the domestic company to create a tax exempt account to 'flow' the dividends out to its shareholders. Therefore, the domestic company is required to comply with Section 108 of the ITA in respect of the payment of such dividends to its shareholders.

The IRB has recently confirmed this requirement and has indicated that the shareholders of the domestic company will be entitled to a refund of the tax deducted on the basis that the dividend is tax exempt in their hands. It has been highlighted to the IRB that this causes unnecessary administrative work for taxpayers as well as the IRB.

The Institutes would suggest that the IRB provide a concession to waive the requirement for the domestic company to deduct tax pursuant to Section 108 in respect of such dividends. In the absence of such a concession, we would recommend that the dividend be allowed to 'flow through', as is the case for foreign source dividend income. Such a concession makes logical sense, as the objective is to prevent unnecessary paperwork for both the taxpayer(s) and the IRB.

***Answer*:**

The IRBM has no power to provide any concession of non application of section 108 ITA 1967.

23.0 Foreign Income Received in Malaysia

Under paragraph 28 of Schedule 6 of the ITA , income derived from sources outside Malaysia and received in Malaysia by any person (other than a company carrying on business of banking, insurance or sea and air transport) is exempt and the amount received is credited to an exempt account.

The word "received" is not defined in the ITA and thus it could also encompass constructive remittances, which should be credited to the exempt account.

The Institutes would like to seek IRB's confirmation that crediting constructive remittances to the exempt account is acceptable.

***Answer*:**

The intention to exempt foreign income received in Malaysia is to encourage persons to bring back money into Malaysia. Thus the amount of income received in Malaysia by companies will be credited into the exempt account enabling companies to issue exempt dividend which is paid out of the exempt account. If there is no income actually received in Malaysia, the exempt provision is not applicable.

The amount of income from the foreign source income deemed received in Malaysia is the lower of nett profit or actual amount remitted.

24.0 Income Derived from A Partnership with Different Year End

A company which is a partner of a partnership with a different accounting year end would face difficulty in declaring its partnership income under the Self Assessment system (current year basis) as illustrated below:-

ABC Sdn Bhd (ABC) and XYZ Sdn Bhd (XYZ) are partners in a partnership. ABC's financial year end falls on 31 December while XYZ's financial year end is 31 March. The partnership closed its accounts in line with the dominant partner's (ABC) year end. XYZ when submitting its tax return for the year of assessment (YA) 2005 (in October 2005) and subsequent YA would not be in a position to disclose the correct amount of its share of its partnership as the partnership accounts has not been closed and the partnership return will only be submitted in June 2006.

Based on the minutes of the Operations Dialogue held on 21 November 2001, the IRB had clarified that an estimate of the share of the partnership's income will be accepted. Upon the finalization and submission of the partnership return, an additional or reduced assessment will be issued by the IRB.

The Institutes would like to propose that in such a situation, XYZ's balance of the finalised partnership income for the year ended 31 December 2005 (which may either be an excess or deficit) be assessed in YA 2006 so as to avert any revision to its tax return for YA 2005. The above circumstance will not be restricted to that of March and December year ends, but will occur when a partnership return is submitted after the corporate partner's return is submitted. Therefore, we would like to propose that should such circumstances arise, the balance of the share of the partnership income be allowed to be assessed in the following YA. The Institutes also urge the IRB to consider the introduction of self-amending provisions in the ITA to allow revisions of tax returns in such situations.

***Answer*:**

The basis period for a partnership is 31 December. Section 21(1). Whatever the basis period for a year of assessment of the partners, the share of partnership profit for the year of assessment will be income from partnership of the partners for that YA.

Where the basis period of a partner ends on a day other than 31 December, its estimated share of partnership income must be declared in its tax returns and an amendment of the amount of the actual amount of its share of profits must be made when the accounts of the partnership is finalised and the partnership files its return for the YA. The revision may be made by way of a letter.

25.0 Tax Treatment for Contractors and Property Developers

In line with the requirement of paragraph 29 of Financial Reporting Standard (FRS) 111 on Construction Contracts and paragraph 35 of FRS 201 on Property Development Activities, profit from construction and property development activities are to be recognised by using the percentage of completion method.

The Institutes understand that the IRB applies the percentage of completion method based on the progress payments receivable in assessing property developers. Where the duration of a project does not exceed two years, the completion of project method is allowed (this was previously agreed by the IRB in the Technical Dialogue held on 16 February 1994).

Based on the minutes of the technical dialogue held on 20 April 2001, the IRB allows taxpayers to present alternative basis of recognising profits for property developers so long as the methods presented in the tax computations are fair, consistent and reflective of the profits of the property developer company for the year, other than the "Progressive Profit Method" that may be required by the IRB.

The Institutes would like to seek confirmation whether the percentage of completion method (used in preparing the audited accounts) is still acceptable in computing the adjusted income of the taxpayer, or whether there is any change to the above treatment and whether this basis has been extended to include contractors, whose nature of work is similar to that of a developer.

***Answer*:**

A reference can be made to a Public Ruling on Property Development and Construction Contracts which has been issued on 13 March 2006. The IRBM will also issue a Regulations on this issue.

26.0 Determination of Residence Status of Individuals

The determination of the residence status of individuals is essentially governed by the physical presence of an individual in Malaysia, as provided for by Section 7 of the ITA. In this respect, the passports of individuals have been used in determining the physical presence in Malaysia. Expatriates are issued with Gold Cards that are used instead of their passports. With the use of the Gold Cards, the passports are no longer stamped at the point of entry/exit and therefore, cannot be used to indicate one's physical presence in Malaysia. Travel printouts are then issued by the Immigration Department upon request by the taxpayer or their agents.

The Institutes have received feedback from members that the Immigration Department has ceased printing such travel printouts of expatriates who use the Gold Cards to travel. In the absence of such printouts, the determination of the residence status has been difficult and onerous.

The Institutes would like to seek the IRB's view on other alternative means to be used in determining the residence status of such individuals when they are leaving Malaysia permanently. Does this mean that expatriates should insist that the Immigration Department stamp their passports at the point of entry/exit and forget about the Gold Cards? Is it sufficient to rely on the terms and conditions stated in the contract of employment? Where a logbook (which has details of the period of stay/travel) is kept and endorsed annually by the employer, would the IRB consider that this is acceptable for purpose of determining residence?

***Answer*:**

Administratively the IRBM has considered the employment pass as a means to determine the physical presence in Malaysia, so a logbook (which has details of the period of stay/travel) provided that it is endorsed by the employer or such similar document that can indicate one's physical presence in Malaysia is acceptable.

27.0 Islamic Banking Products

There are more and more Islamic banking products being created for Malaysian taxpayers but there is a lack of clarity on how each of these new products should be dealt with in the tax computation for both the bankers and the enterprise utilising the product.

For example, it is not clear as to how a taxpayer should claim qualifying cost for capital allowances purposes or how profit should be recognised by the financier if an asset is acquired under (i) Deferred-instalment Sale [Al-Bai Bithaman Ajil] contract; and (ii) Advance Purchase [Bai'Salam] contract.

The Institutes are of the view that the IRB should take positive steps to participate in the development of the Islamic banking products jointly with Bank Negara Malaysia so as to ensure that once a new Islamic product is available, a Public Ruling is also issued to clarify the tax implications.

***Answer*:**

The IRBM took note of the concern and the need to issue guidelines to clarify tax implications on Islamic financial instruments.

28.0 RPGT returns – Conditional Contracts

Pursuant to Section 13 of the RPGT Act, 1976, every chargeable person who disposes of a chargeable asset and every person who acquires the asset so disposed of shall make a return to the Director General within one month (or such further period as the Director General may allow on a written request being made to him) of the date of disposal of that asset.

In practice, the disposer is required to submit CKHT 1 return and the acquirer is required to submit CKHT 2 return to the tax authorities within one month from the date of disposal of the chargeable asset. Under normal circumstances, disposal of real property is deemed to have taken place on the date of a written agreement. However, conditional contracts, (for example, where approval from specific authorities is required, etc) may defer the date of disposal to a later date. In some cases of conditional contracts, problems arise where the disposer and the acquirer had submitted a return to the Director General within one month from the date of the contract and the assessment had

been raised based on the return submitted, but the contract was aborted subsequently due to non-fulfillment of the conditions as stated in the contract. Under such circumstances, the disposer may face difficulties in recovering the tax he/she had paid to the authority.

In view of the above, the Institutes propose that Section 13 of the RPGT Act, 1976 be amended to allow the filing of RPGT returns (CKHT 1 and CKHT 2) upon the fulfilment of all conditions as stated in the contract. This will cut down taxpayers' compliance costs as well as the administrative costs of the IRB.

***Answer*:**

Administratively, extension of time can be given for such cases and the application for that extension of time must be made to the respective IRBM branches.

Appendix A

A10 GAZETTING OF 1998 TO 2005 BUDGET PROPOSALS

As of the date of this Budget Commentary, most of the 1998 to 2005 Budget proposals announced by the Honourable Finance Minister in the previous Budget Speeches have been gazetted by way of changes to the existing legislation or by issue of statutory orders. The proposals which have not been gazetted are summarised below:

1998

1. Private clinics which provide special wards for lower income earners will be given investment tax allowance of 60% on the qualifying capital expenditure incurred.

1999

1. Repair and maintenance activities for luxury boats and yachts undertaken in Langkawi will be granted tax exemption for a period of 5 years.

2003 Budget

1. Qualifying capital expenditure incurred by a non-rubber plantation company in the preparation of land, planting and maintenance of rubberwood cultivation will be given Accelerated Agriculture Allowance. The write-off period for the relevant expenditure will be accelerated from two years to one year on condition that the company plants at least 10% of its plantation with rubberwood trees.
2. A Pioneer Status company which intends to undertake reinvestment before the expiry of its Pioneer Status will be eligible for Reinvestment Allowance, on condition that the Pioneer Certificate is surrendered for cancellation.
3. A company that invests in a wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land will be allowed a deduction equivalent to the amount of the investment, and the wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land will be exempted from service tax.

4. Locally-owned companies that reinvest in the promoted food processing activity will be given another round of the following incentives:

   (i) Companies located outside the promoted areas:

      (a) Pioneer Status with tax exemption of 70% of the statutory income for 5 years; or

      (b) Investment Tax Allowance (ITA) of 60% on qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 70% of statutory income in each year of assessment.

   (ii) Companies located in the promoted areas:

      (a) Pioneer Status with tax exemption of 85% of the statutory income for 5 years; or

      (b) ITA of 80% on qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 85% of statutory income in each year of assessment.

5. New and existing companies that undertake design, R&D and production of qualifying automotive modules or systems will be given the following incentives:

   (i) Pioneer Status with tax exemption of 100% of the statutory income for 5 years; or

   (ii) ITA of 60% on qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 100% of the statutory income in each year of assessment.

   The qualifying automotive component modules or systems are as follows:

   (a) front corner module;
   (b) rear corner module;
   (c) instrument panel module;
   (d) strut and absorbers and spring assembly module;
   (e) bumper module;
   (f) front cross member module;
   (g) function integrated door module;
   (h) fuel tank module;
   (i) seat module;
   (j) pedal module;
   (k) door trim module,

(l) floor console module;
(m) tyre and wheel module;
(n) brake system;
(o) wiper system;
(p) exhaust system;
(q) audio system;
(r) HVAC (Heater Ventilation Air-Conditioning System);
(s) air bag system;
(t) power and signal distribution system;
(u) alarm system;
(v) seat belt system;
(w) exterior lighting system;
(x) body in white module; and
(y) engine management system, safety system, telemetrics, navigational system, engine fuel injection, vehicle intelligence system.

6. The manufacture of the following categories of machinery and equipment will be classified as a strategic industry:

(i) Specialised/process machinery or equipment for specific industries;

(ii) Packaging machinery;

(iii) Plastic extrusion machinery; and

(iv) Parts and components for the above machinery and equipment.

7. Companies which invest in knowledge intensive activities will be given the following tax incentives and deductions:

(i) A company granted "Strategic Knowledge-based Status Company" will be given pioneer status with tax exemption of 100% of statutory income for a period of 5 years or be given investment tax allowance of 60% on the qualifying capital expenditure incurred within a period of 5 years, with the allowance deducted for each year of assessment to be set-off against 100% of statutory income on certain conditions.

(ii) Expenditure incurred by a company for drafting the individual Corporate Knowledge-based Master Plan will be allowed as a deduction in the tax computation. The deduction should be claimed when the company begins to implement the Corporate Knowledge-based Master Plan.

8. The existing incentives for the use of biomass as a source of renewable energy will be extended for another 3 years until 31 December 2005. The scope of the existing incentives will be extended to include the use of hydro electric power of not more than 10 megawatts and the use of solar power.

2003 Economic Stimulus Package

1. Group relief will be extended under a pre-packaged scheme to forest plantations, including rubber plantations, and to selected products in the manufacturing sectors such as biotechnology, nanotechnology, optics and photonics.
2. The pre-packaged incentive scheme for Pioneer Status with 100% tax exemption for 10 years, or ITA of 100% for 5 years will be extended such that:
   (i) The maximum period for Pioneer Status will be extended to 15 years.
   (ii) The period for ITA will be extended to 10 years.
3. Expenditure on R&D activities undertaken overseas, including the training of Malaysian staff, will be considered for a double deduction, on a case-by-case basis.
4. R&D companies will be eligible for either a "second round" of the Pioneer status incentive for another 5 years or the ITA for a further 10 years.
5. Hypermarkets and direct selling companies that export locally produced goods will be given income tax exemption on statutory income equivalent to 20% of their increased export value.

2004

1. Manufacturing, agriculture and tourism companies in the promoted areas will be given the following additional tax incentives:
   (i) Pioneer Status with tax exemption of 100% of statutory income for a period of 5 years; or
   (ii) ITA of 100% of the qualifying capital expenditure incurred within a period of 5 years. The allowance can be used to set off against 100% of statutory income in each year of assessment.

2. Locally-owned companies which reinvest in the production of heavy machinery will be given the following additional tax incentives:

   (i) Companies located outside the promoted areas –

      (a) Pioneer Status with tax exemption of 70% on increased statutory income arising from reinvestment for a period of 5 years; or

      (b) ITA of 60% on additional qualifying expenditure incurred within a period of 5 years. The allowance can be set off against 70% of statutory income in each year of assessment.

   (ii) Companies located in the promoted areas –

      (a) Pioneer Status with tax exemption of 100% on increased statutory income arising from reinvestment for a period of 5 years; or

      (b) ITA of 100% on additional qualifying expenditure incurred within a period of 5 years. The allowance can be set off against 100% of statutory income in each year of assessment.

3. Locally-owned companies which reinvest in the production of machinery and equipment, including specialised machinery and equipment and machine tools, will be given the following incentives:

   (i) Pioneer Status with tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from reinvestment for a period of 5 years; or

   (ii) ITA of 60% (100% for promoted areas) on additional qualifying capital expenditure incurred within a period of 5 years with the allowance deducted in each year of assessment against 70% (100% for promoted areas) of the statutory income.

4. Companies utilising biomass to produce value added products will be given the following additional tax incentives:

   (i) For new companies –

      (a) Pioneer Status with income tax exemption of 100% of statutory income for a period of 10 years; or

      (b) ITA of 100% on qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 100% of statutory income in each year of assessment.

(ii) For existing companies that reinvest –

(a) Pioneer Status with income tax exemption of 100% on increased statutory income arising from reinvestment for a period of 10 years; or

(b) ITA of 100% on additional qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 100% of statutory income in each year of assessment.

5. Tax incentives for the venture capital industry will be enhanced as follows:

For a venture capital company (VCC) –

(i) The method to determine the 70% investment requirement in venture companies (VCs) to qualify for tax exemption will be relaxed by taking into account only the value of funds invested and not the total gross fund which includes cash, fixed deposits and interest earned; and

(ii) The condition that investment in VCs be disposed through the exit mechanism of an initial public offering to qualify for tax exemption will be extended to include any exit mechanisms approved by the Securities Commission.

6. Hotel and tourism project operators who invest in expansion, modernisation and renovation will be given another round of incentives for a period of 5 years as follows:

(i) Companies located outside the promoted areas –

(a) Pioneer Status with tax exemption of 70% of statutory income; or

(b) ITA of 60% on qualifying capital expenditure incurred with the allowance deducted in each year of assessment against 70% of the statutory income.

(ii) Companies located in the promoted areas –

(a) Pioneer Status with income tax exemption increased from 85% to 100%; or

(b) ITA increased from 80% to 100% of capital expenditure deducted against 100% of the statutory income in each year of assessment.

7. Locally-owned companies which reinvest in cold chain facilities and services for perishable agricultural produce will be given the following incentives:

   (i) Pioneer status with tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from reinvestment for a period of 5 years; or

   (ii) ITA of 60% (100% for promoted areas) on the additional qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 70% (100% for promoted areas) of statutory income in each year of assessment.

2005

1. Charitable institution or organisation for charitable purposes will be allowed to disburse annually minimum 50% of the income received in the preceding year.

2. Companies producing halal food and have obtained halal certification from Jabatan Kemajuan Islam Malaysia and other quality certification will be given ITA of 100% on qualifying capital expenditure incurred within a period of 5 years with the allowance deducted against 100% of statutory income in each year of assessment.

3. Existing companies which relocate their manufacturing activities to the promoted areas will be given another round of the same incentives.

Appendix B

Issues Relating to Previous Budget Proposals (Pages 53 – 57 of Budget Commentary & Tax Information 2006)

Note:

1. ( ) refers to numerical sequence of questions from pages 53 – 57 of Budget Commentary & Tax Information 2006. Only issues under the jurisdiction of IRBM are addressed.

2. Other Budget Proposal are relating to incentives of Pioneer Status and Investment Tax Allowance which are provided under Promotion of Investment Act (PIA) 1986 and will be dealt with by Malaysian Industrial Development Authority (MIDA).

Budget Proposal 1998	Orders / Rules	Status
(1)	The Income Tax Rules for private clinics which provide special wards for lower income earners will be given investment tax allowance of 60% on the qualifying capital expenditure incurred.	No Income Tax Rule to be issued. It is recognised as an approved service project under Schedule 7B ITA 1967. The answer has been given during the dialogue (2005)
Budget Proposal 1999		
(1)	The Income Tax Exemption Order for the income derived from repair and maintenance activities for luxury boats and yachts in Langkawi.	Under discussion (awaiting information from MOF).
Budget Proposal 2003		
(1)	The Income Tax Rules for the accelerated agriculture allowance on qualifying capital expenditure incurred by a non-rubber plantation company in the preparation of land, planting and maintenance of rubberwood cultivation.	Under discussion (awaiting guidelines from the relevant Ministry – Kementerian Perusahaan Perladangan & Komiditi).

(3)	The Income Tax Rules for a company that invests in a wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land.	Under discussion (awaiting guidelines from the relevant Ministry – Kementerian Perusahaan Perladangan & Komiditi).
(7)(ii)	The Income Tax Rules for expenditure incurred by a company for drafting the individual Corporate Knowledge-based Master Plan.	Under discussion (awaiting information from MOF).
2003 Economic Surplus Package		
(1)	The Income Tax Exemption Order for group relief under pre-packaged incentives i.e. forest plantations and selected products in sectors such as biotechnology, nanotechnology, optics and photonics.	In the process of drafting.
(2)	The Income Tax Exemption Order for the pre-packaged incentive scheme for pioneer status with 100% exemption for 10 years or investment tax allowance of 100% for 5 years.	The relevant Exemption Orders have been gazetted on 23.03.2006. Pioneer Status – Income Tax (Exemption) (No. 11) 2006. Income Tax Allowance – Income Tax (Exemption) (No. 12) 2006.
(3)	The Income Tax Rules on double deduction on expenditure incurred for R&D activities undertaken overseas.	No Income Tax Rules to be issued. Application for approval for that incentive has to be made to MOF.
(5)	The Income Tax Exemption Order for the value of increased export of locally produced product exported by the hypermarket and direct selling companies.	Under discussion (awaiting guidelines from the relevant Ministry – Kementerian Perdagangan Dalam Negeri & Hal Ehwal Pengguna).

Budget Proposal 2004		
(5)	The Income Tax Exemption Order for the income derived from activities of venture capital company (VCC) and venture capital management company (VCMC)	The relevant Exemption Orders have been gazetted on 24.02.2005. VCC – Income Tax (Exemption) (No. 11) 2005. VCMC – Income Tax (Exemption) (No. 12) 2005.
Budget Proposal 2005		
(1)	The Income Tax Rules on allowing the charitable institution to disburse annually minimum 50% of the income received in the preceding year.	No Income Tax Rules to be issued. The provision is provided under the conditions for approval.

Appendix C

Public Ruling 3/2004: Entertainment Expenses

	Type of entertainment	**100%**	**50%**	**ND**
1	Entertaining potential customers [rationale: the expenditure meets the criteria of Section 33(1) but is restricted under Section 39(1)(l) Section 39(1)(l)(vii) is not applicable as the provision of entertainment is not related wholly to sales arising from the business]		**X**	**IRBM**
2	Entertaining employees of related companies: - assisting in operations [rationale: the expenditure meets the criteria of Section 33(1) but is restricted under Section 39(1)(l). Section 39(1)(l)(vii) is not applicable as the provision of entertainment is not related wholly to sales arising from the business] - oversees investment in the company [rationale: the expenditure does not meet the criteria of Sections 33(1)]		**X**	**IRBM** **X (IRBM**
3	Payment for dinners hosted by associations and attended by staff - original intention is to entertain the staff [rationale: the intention is to provide entertainment to staff, and therefore meets the criteria of Section 33(1) and restriction under Section 39(1)(l) is not applicable by virtue of Section 39(1)(l)(i)] - original intention is to sponsor the association and the attendance by staff is incidental to this intention [rationale: the expenditure does not meet the criteria of Section 33(1)]	**X (IRBM - based on the facts of the case)**		**X (IRBM**
4	Cash contributions for annual dinners of customers [rationale: the expenditure is to maintain existing business relationships.]		**X**	**IRBM**

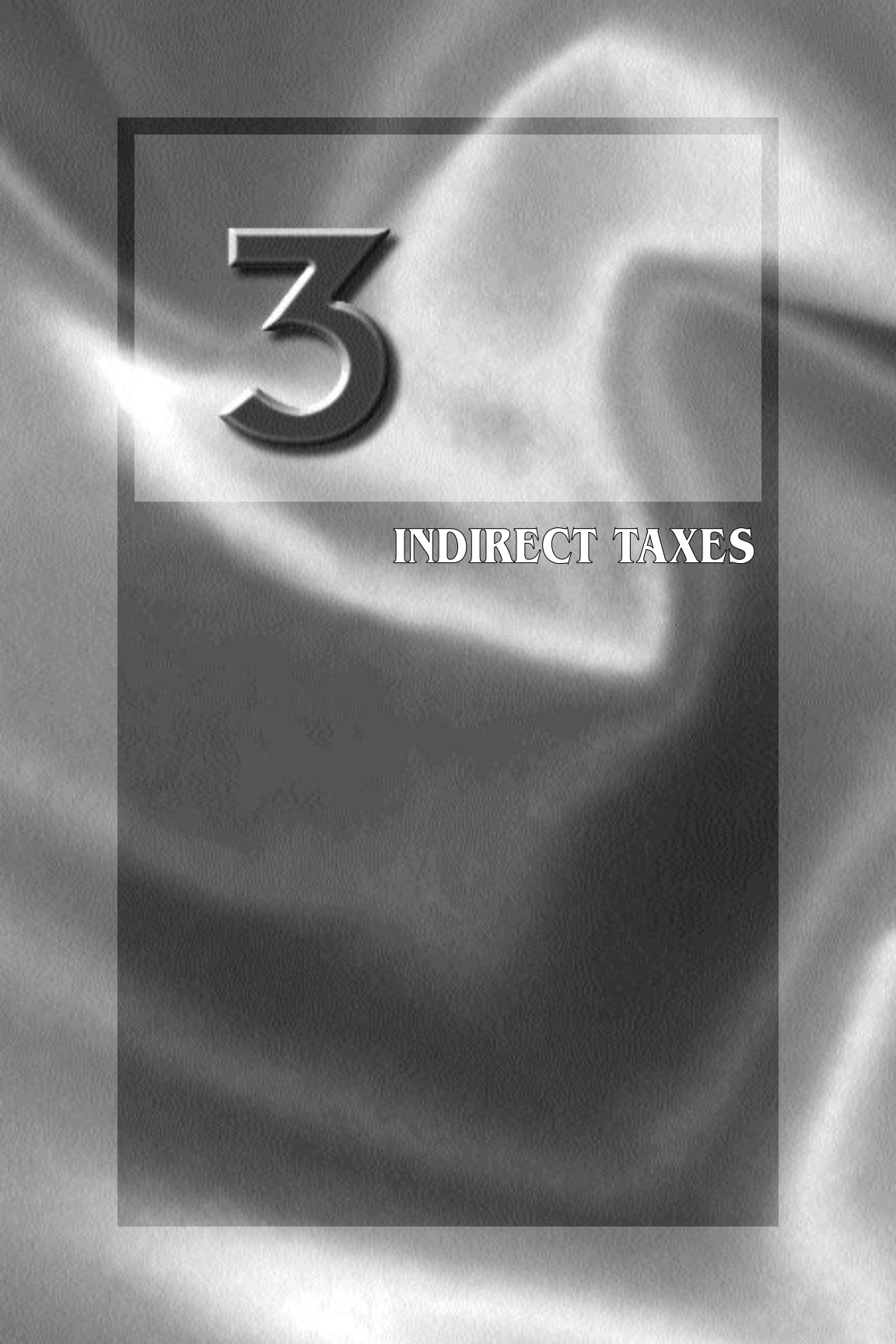
	Type of entertainment	**100%**	**50%**	**ND**
5	Gifts for annual dinners of customers : - with logo - without logo (including hampers and other lucky draw prizes) [rationale: the expenditure is to maintain existing business relationships.]	**X (IRBM**	**X (IRBM)**	
6	Entertainment at AGM (listed and unlisted companies)			**X (IRBM)**
7	Government authorities (for bidding of projects, securing approvals, etc. whether the payments are legal or illegal) [rationale: such expenditure, akin to entertainment incurred on potential customers (for new projects) or existing customers (for ongoing projects).	**X (after project has started)**	**X (prior to project being awarded)**	**IRBM**
8	Employees' family members, including - family days / outings - annual dinners [rationale: such expenditure could be regarded as expenditure incurred in the production of gross income as it is expended on staff for the purpose of (for example) boosting staff morale which in turn may improve the efficiency, effectiveness and productivity of the staff. Meanwhile, it is not practical to provide entertainment to staff in the form of family days / outings and annual dinners without expending for the staff's family members and therefore, the entire amount should meet the criteria of Section 33(1) and restriction under Section 39(1)(l) is not applicable by virtue of Section 39(1)(l)(i)]	**X (IRBM** **X (IRBM**		
9	Wedding gifts for customers (with or without logo) [rationale: the expenditure does not meet the criteria of Section 33(1) as it represents a personal expenditure]			**X (IRBM)**

	Type of entertainment	**100%**	**50%**	**ND**
10	Flowers for customers' opening/launching ceremonies [rationale: the expenditure is to maintain existing business relationships and is akin to the provision of entertainment (i.e. hospitality / gifts) to existing customers]		**X (IRBM)**	
11	Condolences / congratulations for customers (cash or gifts) [rationale: the expenditure is to maintain existing business relationships]		**X**	**IRBM**
12	Hampers for customers on festive seasons [rationale: the expenditure is to maintain existing business relationships]		**X (IRBM**	
13	Suppliers, auditors, tax agents, bankers, lawyers, etc. [rationale: in accordance with Para 8(ii) of Public Ruling 3/2004]		**X**	**(IRBM-only existing supplier is allowed 50%)**
14	Entertainment allowance - general - however, provision of entertainment which is related wholly to sales arising from the business, where the details (amount and purpose) can be identified, the deduction should be 100% pursuant to Section 39(1)(l)(vii)	 **X**	**X (IRBM** **(IRBM)**	
15	Cost of travel which is incidental to outings and family day trips (i.e. provision of entertainment to staff) [rationale: cost of travel is part and parcel of the provision of entertainment to staff, and not leave passage as mentioned in Section 39(1)(m). In other words, travel does not automatically equate to leave passage and in the current scenario, the nature of the travel cost is "provision of entertainment" and not "leave passage".]	**X**		**(IRBM)**

	Type of entertainment	100%	50%	ND
16	Promotional gifts, including small souvenirs, bags and travel tickets provided as gifts (regardless whether the gifts bear the company's logo, emblem, or insignia) to customers / visitors at trade fairs / industrial exhibitions outside Malaysia for the purpose of promoting exports from Malaysia. [rationale: in accordance with Section 33(1) and not restricted under Section 39(1)(l) by virtue of the proviso of Section 39(1)(l)(iii)]	**X (IRBM)**		
17	Food and drinks provided by a property sales agents during the launching of a new property, or during the sale period, that are provided to potential property buyers regardless whether there are successful sales concluded [rationale: in accordance with Para 6.7 of Public Ruling 3/2004]	**X (IRBM)**		
18	Entertainment incurred on existing customers (who has signed a contract) during the period of the contract [rationale: such expenditure is regarded as provision of entertainment related wholly to sales arising from the business]	**X**	**IRBM**	
19	Entertainment incurred on existing customers who may continue to give new businesses (which is entertainment related wholly to sales arising from business) [rationale: such expenditure is regarded as provision of entertainment related wholly to sales arising from the business, unless no sales have been made to a particular customer for a considerably long period such that that customer should be regarded as a new / potential customer]	**X**	**IRBM**	

Notes:

ND = not deductible
X = answer of Association
IRBM = answer of IRBM



3

INDIRECT TAXES

A Amendments to Excise Act 1976

1.0 Amendment of subsection 2(1)(b)

The Excise Act 1976 [Act 176] is amended in subsection 2(1) in the definition of value by substituting for paragraph (b) the following paragraph:

(b) in relation to imported goods –

(i) the value of such goods for the purpose of customs duty determined in accordance with the Customs Act 1967; and

(ii) the amount of customs duty, if any, payable on such goods.

Reference:

Excise (Amendment) Act 2005

Effective date:

20 October 2005

Comment:

Before the amendment, excise duty on imported goods is on the CIF value of the goods. With effect from the date of the amendment, excise duty would be calculated on the CIF value plus customs duty paid or payable on the goods. This means an importer has to pay a higher excise duty on the imported goods.

B Amendments to Customs Act 1967

1.0 New Order

1.1 Customs (Values of Imported Completely Built-Up Motor Vehicles) (New) Order 2006

By the power given under section 12 of the Customs Act 1967, the Minister of Finance introduces **Customs (Values of Imported Completely Built-Up Motor Vehicles) (New) Order 2006**

Reference:

Customs (Values of Imported Completely Built-Up Motor Vehicles) (New) Order 2006

Effective date:

22 March 2006

Comment:

This new order pre-determines the CIF value of imported motor vehicles e.g. Alfa Romeo, Audi, BMW Chevrolet, Merc Benz etc. The gazette value of motor vehicles will serve to prevent under declaration or avoid dispute on the value of imported motor vehicles.

2.0 Amendment to Customs Duties (Goods of ASEAN Countries Order) (ASEAN Harmonised Tariff Nomenclature And Common Effective Preferential Tariff) (Amendment) (No. 5) Order 2006.

The CEPT duty rate for Motor cars (including station wagons, sports cars and racing cars) importted from ASEAN countries is reducedd from 15% to 5%.

Reference:

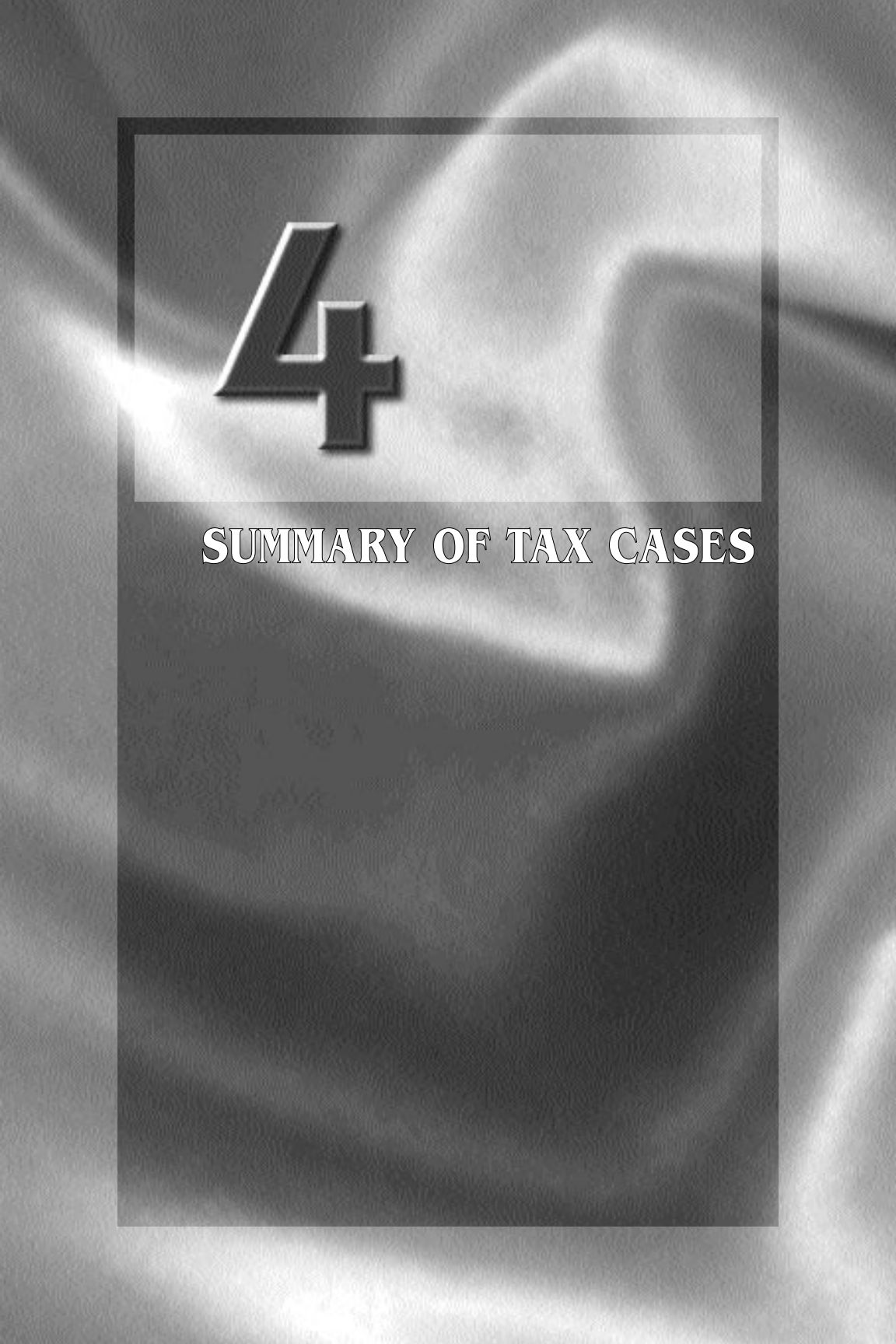
Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature And Common Effective Preferential Tariff) (Amendment) (No. 5) Order 2006.

Effective date:

22 March 2006

Comment:

The lower duty rate means an importer of motor cars of ASEAN countries origin will pay a lesser import duty.



4

SUMMARY OF TAX CASES

A Malaysian Courts' Decisions

1.0 ALEXANDER JOHN SHEK KWOK BUN v KETUA PENGARAH HASIL DALAM NEGERI (2005) MSTC 4,142 (HIGH COURT)

Facts

The Director General of Inland Revenue ("DGIR"), pursuant to Section 104(1) of the Income Tax Act 1967 ("ITA") issued a certificate dated 26 April 1999 to Alexander John Shek Kwok Bun ("taxpayer") prohibiting him from leaving the country unless he settled his taxes of RM75,756.11 ("the impugned sum").

The taxpayer vide a notice of motion dated 13 May 2004, had applied to the High Court ("the Court") to lift the ban in order for him to leave Malaysia for one and a half months for a medical check-up in Australia.

Issue

Whether the taxpayer can apply for leave of the High Court to lift the ban imposed on him by the DGIR under Section 104 of the ITA on medical grounds?

Arguments

Taxpayer

The taxpayer put forward the following arguments:

(i) He denies receipt of any brokerage fee for the sum of RM100,000.00 from a company, WAB Keluarga Realty Sdn Bhd upon which the taxable sum of RM75,000 was based upon and which formed the subject matter of a suit instituted by the respondent against him namely, Session Court Summons No. 51-10-99-11;

(ii) He had no knowledge of the ban until he received a letter dated 26 April 1999 from the DGIR;

(iii) He had no knowledge about the impugned sum owed to the DGIR, otherwise he would have appealed;

(iv) He denied owing the DGIR the impugned sum and stated that the ban was "unconscionable and unjustifiable" in the eye of the law under Section 104 of the ITA;

(v) The DGIR did not conduct a proper investigation before computing the impugned sum;

(vi) He had instituted action against WAB Keluarga Realty Sdn Bhd for defamation and general damages for the wrongful act of the clerk to include the sum which he did not receive and this matter was still pending;

(vii) He expressed dissatisfaction at the reply of the Inland Revenue Board dated 12 April 2004 which stated that the ban could be lifted only upon full payment of the impugned sum. As for the request to leave the country for medical purposes, he had to liaise with the "Pengarah Bahagian Operasi, Lembaga Hasil Dalam Negeri Malaysia";

(viii) He did not any receive response from the "Pengarah Bahagian Operasi" in respect of the permission to travel for medical check up in Australia; and

(ix) He had no intention of absconding as he was a person of means and has an active legal practice.

DGIR

The DGIR put forth the following contentions:

The DGIR has issued the Section 104 certificate correctly in accordance with the law;

(i) The taxpayer did not appeal to the Special Commissioners of Income Tax under Section 99 of the ITA on the tax assessed;

(ii) The DGIR denied the taxpayer had no knowledge about the payment of the impugned sum as a letter dated 9 August 1999 had been sent to him;

(iii) The DGIR denied the taxpayer had no knowledge about the Section 104 certificate as it had been sent to his residential address; and

(iv) The Section 104 certificate could only be lifted if the taxpayer satisfied the conditions spelt out in Section 104(4) of the ITA i.e. effect full payment of the impugned sum or furnished security to the satisfaction of the DGIR for such payment.

Decision

The taxpayer's appeal was dismissed. It was held that the taxpayer had to go to the Special Commissioners of Income Tax first before proceeding to the Court to raise the plea of non-observance of the principle of natural justice or to establish that the DGIR acted arbitrarily and in a non-judicial manner. Only after that does the taxpayer has the right to appeal in the Court. The Court, in arriving at the decision has agreed with the cases submitted by the DGIR namely Chong Woo Yit v Government of Malaysia [1989]1 CLJ (Rep) 9 and the Sun Man Tobacco Co. Ltd v Government of Malaysia [1973] 2 MLJ 163, where it was held that the Court has no power to entertain any plea by reason of Section 106(3) of the ITA.

2.0 KETUA PENGARAH HASIL DALAM NEGERI v MALAYSIAN BAR (2005) MSTC 4,145 (HIGH COURT OF MALAYA)

Facts

The taxpayer is a body corporate established under Section 41 of the Legal Profession Act, 1976 ("LPA"). Members of the taxpayer are Advocates and Solicitors admitted and enrolled under the LPA or any other written law prior to the coming into operation of the LPA. The Minister of Finance ("MOF"), by powers under Section 127(3)(b) of the Income Tax Act 1967 ("ITA"), had granted the taxpayer tax exemption in relation to its income except for the income derived from the Compensation Fund, dividend income and development income. Based on this, the Director General of Inland Revenue Board ("DGIR") had taxed the interest income derived by the taxpayer from the Compensation Fund for the Years of Assessment 1979 to 1991. In doing so, the Revenue had treated the taxpayer as a trade association within the ambit of Section 53 of the ITA.

The taxpayer disagreed with the said treatment and had sought clarification on the tax exempt status granted to it under Section 142(2) of the LPA. While waiting for clarification on the taxpayer status, the DGIR had requested the taxpayer to file the income tax returns for the years of assessment 1979 to 1991 and informed the taxpayer that no assessments would be raised. As requested, the taxpayer filed the returns on the basis that it was exempted from tax and therefore did not claim capital allowances. Due to the time taken in determining the taxpayer's status, the DGIR had issued the notices of assessment on the basis that the taxpayer was a trade association.

The taxpayer's appeal was allowed by the Special Commissioners of Income Tax (SCIT). Consequently the DGIR appealed to the High Court.

Issues

(i) Whether by virtue of Section 142(2) of the LPA, the taxpayer is liable to income tax;

(ii) Whether the taxpayer should be taxed as a trade association;

(iii) Whether the taxpayer was entitled to capital allowance deductions should it be held to be a trade association;

(iv) Whether income derived from the Compensation Fund was chargeable to tax by virtue of Section 80(13) of the LPA.

Arguments

DGIR (Appellant)

The DGIR contended that:

(i) The SCIT in, construing Section 142 (2) of the LPA failed and/or neglected to take into consideration Section 142 (1) which clearly explains the scope of application of Section 142 as a whole. Before an exemption is to be granted, a clear and unambiguous provision must be spelt out. If the provision of the act is erroneous or ambiguous, the Court should not rule in favour of the taxpayer;

(ii) In order to ascertain whether an association falls under the category of "trade association", one has to look at the objectives and purposes of its establishment as well as its activities. Based on the objects stated under Section 42 of the LPA, it clearly shows the establishment and the objectives of the taxpayer are in accordance with the main object stipulated for 'trade association" under Section 53 (1) of the ITA.

(iii) The DGIR argued that the exemption is only conferred to an institution approved by the DGIR under Section 44 of ITA. Therefore, in order for the taxpayer to enjoy the exemption accorded to it under the said section, approval from the DGIR shall first need to be obtained.

S.80(13) of the LPA is not a specific provision dealing with tax. If there was an inconsistency in the law, and in particular between the ITA and LPA, the ITA shall prevail.

Taxpayer

The taxpayer argued that:

(i) Section 142(2) of the LPA is an exemption provision applicable to the Malaysian Bar;

(ii) It is not a trade association as defined in Section 53 of the ITA. For it to be a trade association it must first of all be an "association of persons". The taxpayer is not an association of persons as it lacks the essential ingredients of an association of persons in that :

a. it was not formed by its members but by statute;

b. the Advocates and Solicitors do not voluntarily become its members. There is no volition on their part to be members;

c. the object of the taxpayer is not to produce income, profit or gain;

d. the taxpayer is a creature of statute and its primary object is to uphold justice.

(iii) The income received cannot be deemed to be income from business pursuant to Section 53 (1) of the ITA as the income was not received on revenue account but for various specific purposes;

(iv) The income received from the Compensation Fund is exempt from tax by virtue of Section 80 (13) of the LPA which is federal law.

Decision

The appeal of the DGIR was dismissed. The High Court held that:

(i) Sections 142(1) and (2) are to be read separately.

(ii) The taxpayer was not liable to income tax. Clearly there was a drafting error due to the oversight of the drafter of the legal profession bill and if there was ambiguity in the bill, it must be construed in favour of the taxpayer.

(iii) The taxpayer was not a trade association. The taxpayer was set up to uphold the cause of justice and to improve the standard of conduct of the legal profession and not to make profit.

(iv) The LPA stipulated that the taxpayer be exempted from tax on the compensation fund. As LPA was a specific legislation, it prevailed over the ITA, which is a general provision.

(v) The taxpayer, being a statutory body, is entitled to claim capital allowances in accordance to Section 78 of the ITA.

3.0 MOUNT PLEASURE CORPORATION SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI (2005) MSTC 4,151 (COURT OF APPEAL)

Facts

The taxpayer is in the business of housing development and dealing in real estate. Pursuant to a director's resolution dated 4 September 1971, the taxpayer acquired certain properties for RM 570,000.00. In April 1972, the taxpayer submitted layout plans to construct a hotel complex and a theatre club on the said property and thereafter to operate a casino. Besides that, the layout plans for alternative use of the said land i.e. for commercial and housing development were also submitted.

In March 1979, the layout plans for the alternative use were approved instead. Subsequently, when the property was disposed off, notices of additional assessments under the Income Tax Act 1967 ("ITA") were issued by the Director General of Inland Revenue ("DGIR") based on the original cost of the property as at 1971. The taxpayer appealed against the assessments on the ground that the property was acquired for investment purposes and that this intention changed when the layout plan to construct a hotel complex and a theatre club and to operate a casino was rejected. As stipulated in the provision of Section 35(3)(a)(i) of the ITA, the taxpayer contended that the said property should be valued when it was appropriated as stock-in-trade i.e. when the approval for commercial and housing development was granted in 1979.

The taxpayer's appeals were dismissed by the Special Commissioners and the High Court. The taxpayer's argument that the intention changed from investment to disposal of stock was rejected. There was also no evidence adduced to establish that the property was bought for investment purposes.

The taxpayer then appealed to the Court of Appeal.

Issue

Should the cost of the said property be the market value in 1979 or the original cost when the said property was acquired in 1971?

Arguments

Taxpayer

The taxpayer contended that the learned High Court Judge was wrong to hold that there was overwhelming evidence before the Special Commissioners to justify their conclusion when the evidence was consistent with the said property having been acquired as an investment.

DGIR

The DGIR contended that the taxpayer's intention in purchasing the said property was not for investment but for trading purposes and that the taxpayer failed to discharge the onus that the assessments were erroneous.

Decision

The taxpayer's appeal was rejected for the following reasons:-

(i) There was no admissible oral evidence to establish that the property was acquired for investment. Frequent dealings in properties raised a prima facie inference that the taxpayer was in the business of land dealings either as a land developer or as a real estate merchant. As found by the Special Commissioners, the taxpayer failed to rebut the said inference.

(ii) The taxpayer's Memorandum and Articles of Association did not authorize the purchase of land for investment except with surplus funds. It was proved that the taxpayer financed the purchase by family funds but this did not support the taxpayer's claim that the said property was acquired for investment.

(iii) The taxpayer failed to explain why the said property remained as fixed assets in the accounts until 1982, when they had claimed that the property was transferred to stock-in-trade in 1978.

4.0 ALF PROPERTIES SDN BHD V KETUA PENGARAH JABATAN HASIL DALAM NEGERI(2005) MSTC 4,155 (COURT OF APPEAL)

Facts

In 1980, the taxpayer, a company incorporated in Malaysia, had purchased several pieces of land for a total of RM6.1 million. In 1982, the taxpayer obtained approval from the relevant authorities to construct a 31-storey office block on the land.

Subsequently, the management of the taxpayer company changed, and the original plans for the proposed 31-storey office block were amended to that of a 30-storey office block. These amended plans were approved in 1985. The taxpayer had also incurred development expenditure on the land (drawing development and building plans, soil testing, etc), totalling RM1.44 million.

From 1987 to 1990, part of the land was rented out and the rental income therefrom was charged to tax under Section 4(d) of the Income Tax Act, 1967 ("ITA").

On 26 July 1990, the taxpayer entered into an agreement to sell a portion of the land which was not included in the development plan, for a consideration of RM42.5 million. The Director General raised additional assessments on the taxpayer to assess the profits from the sale of the land to tax.

The taxpayer appealed against the additional assessments. Both the Special Commissioners of Income Tax and the High Court dismissed the taxpayer's appeals, ruling that the income from the sale of the land was trading income and hence assessable to tax.

Issue

Whether the disposal of part of the land was a disposal of a capital asset or disposal of stock-in-trade.

Arguments

Taxpayer

The following arguments were put forward by the taxpayer:

(i) The gain from the disposal of the land was proceeds from the disposal of a capital asset. At the time of purchase, the land was intended for long-term investment and not for trading, as evidenced by various circumstances such as the accounting classification of the land, public statements made regarding the intention to purchase the land, etc;

(ii) The fact that the land was at one point valued at a significant amount (RM54.5 million) and yet was not sold at that point in time showed that the land was not acquired for short-term gains;

(iii) Up until the date of the sale, the taxpayer had not commenced any trading in land;

(iv) Prior to the disposal, the land was leased out to derive rental income;

(v) There was no change in the intention of holding the land from the time it was acquired until the time it was sold. The land was not acquired as stock-in-trade and the disposal was merely to realise an investment;

(vi) The taxpayer had to shelve plans to develop the land due to a recession; and

(vii) Proceeds from the disposal were kept in fixed deposits to earn interest income and were also used to repay a shareholder's loan. The act of placing the funds in fixed deposit was merely another form of investment, which showed that the taxpayer's intention all along was to derive investment income.

DGIR

The DGIR contended as follows:

(i) The land was classified as development property in the taxpayer's accounts and hence was not a fixed asset. Further, the taxpayer's accounts do not show the land as an investment;

(ii) In the taxpayer's Trading, Profit and Loss Account, the gains from the disposal of the land were treated as profit;

(iii) The gains are taxable as they were derived from an adventure in the nature of trade. The taxpayer had obtained three valuation reports on the land, which shows that efforts were being made to sell the land;

(iv) In a letter to the DGIR in 1987, it was stated that various options were still being explored vis-à-vis the land. When the land was sold in 1990, there was no evidence to show that the disposal was dud to the recession.

Decision

The Court of Appeal allowed the appeal by the taxpayer, on the following grounds:

(i) It is not sufficient to rely on a company's objects as stated in its Memorandum & Articles of Association. It is necessary to examine the past and present activities of the taxpayer to determine whether a particular activity is one of the taxpayer's stated objects. In the present case, it was apparent that the taxpayer had two equally important objects – carrying on business in immovable property and investment in property.

These two objects were so closely interrelated that in order to determine whether the sale of the land was a business activity or the realisation of an investment, it was necessary to look at the intention of the taxpayer at the time the land was purchased. It was in fact the intention of the taxpayer to purchase the land for investment and there was no evidence of a change in that intention;

(ii) The badges of trade did not exist in this sale. There was no evidence to show that the taxpayer made preparation for the sale – the sale was by chance when a good offer came along and only the unused portion of the land was sold. The fact that the taxpayer kept the land for ten years also showed that the land was purchased for investment and that the sale was nothing more than the realisation of a capital asset; and

Among the reasons that the Special Commissioners held that the taxpayer was trading in land was because of the entries in the taxpayer's accounts. However, the accounts are only a guide and not the deciding factor in determining whether a person is trading. Just because the accounts of the taxpayer were messy and not properly kept does not mean that the taxpayer was trading in land. A transaction which generates income must be viewed in its entirety.

5.0 STERUDA SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI (2005) MSTC 4,188 (HIGH COURT OF MALAYA)

Facts

The taxpayer was a private limited company and its principal objects were to provide consultancy services in gynaecology, obstetrics and other branches of medicine. The taxpayer employed Dr R.S. McCoy (who was also a shareholder and director of the taxpayer company), as a medical consultant and advisor, pursuant to a consultancy agreement. Dr McCoy had then provided services to the taxpayer in accordance with the said agreement.

Pursuant to the consultancy agreement, Dr McCoy was to be paid a monthly salary of RM3,000 as well as a contractual payment of 25% of the profits of the taxpayer company.

Issue

Whether the contractual payment of 25% of profits was a bonus and hence subject to restriction under Section 39(1)(h) of the Income Tax Act 1967 ("ITA").

(*Note that the restriction under Section 39(1)(h) of the* ITA *has since been repealed, effective from the year of assessment* 2002)

Arguments

Taxpayer

The payment of 25% of the net profits was part of Dr McCoy's remuneration package and was not a bonus.

DGIR

The DGIR contended that the character of the remuneration scheme should be examined to determine its true nature. The 25% of net profits paid to Dr McCoy was in fact bonus by another name. This payment was separate and distinct from the monthly payment of RM3,000. Further, the payment of 25% of the net profit was also a bonus because it was conditional upon the taxpayer making a profit. Where the taxpayer did not make any profit, the consultant would not receive any payment other that salary of RM3,000 per month.

Decision

The High Court allowed the appeal by the taxpayer, on the basis that:-

(i) Not every contractual payment which is not a fixed lump sum is a bonus. Whether the payment is a bonus or not depends on the facts of each case and the relationship between the taxpayer and its employees.

(ii) In the present case, the salary of RM3,000 a month was not "normal" remuneration as it did not commensurate with the fact that Dr McCoy was a senior obstetrician and gynaecologist. The RM3,000 was paid as part of a single remuneration package and the fact that part of Dr McCoy's remuneration consisted of 25% of the taxpayer's profits was merely a method of calculating the rest of his remuneration, the payment of which was deferred until after the profits of the taxpayer company were determined. The sum was certain once the profits were determined, the payment was not discretionary and was not subject to review. It also did not apply to any other employee of the company.

(*It is understood that the* DGIR *has filed an appeal against the above decision, with the Court of Appeal*).

6.0 MALAYAN UNITED INDUSTRIES BERHAD V KETUA PENGARAH HASIL DALAM NEGERI & KERAJAAN MALAYSIA (2005) MSTC 4,192 (HIGH COURT OF MALAYA)

Facts

In the year 2001, the taxpayer (through its tax agent) received a requisition under Section 108 of the Income Tax Act 1967 ("ITA") in respect of the years of assessment 1987 to 1993, in the prescribed Form S. The Form S were all dated 12 September 2001. The taxpayer subsequently wrote to the DGIR disputing its liability to pay the requisition, on the basis that the requisitions had been issued more than six years after the expiration of the years of assessment 1987 to 1993 and were hence time-barred.

Issue

Whether the Form S dated 12 September 2001, issued by the DGIR for the years of assessment 1987 to 1993, were time-barred.

Arguments

Taxpayer

That the Form S were time-barred and hence there was no liability for the taxpayer to pay the requisition under the Form S.

DGIR

That the Form S were not time-barred.

Decision

The High Court allowed the appeal by the taxpayer, on the basis that a sum requisitioned under Section 108 (1) of the ITA is a statutory debt and does not constitute a tax nor a duty within the meaning of the proviso to Section 33 (1) of the Limitation Act 1953 ("LA").

Section 33 (1) of the LA states that the LA shall not apply "…to any proceedings by the Government for recovery of any tax, duty or interest thereon…". As the Court found that a sum requisitioned under Section 108 (1) of the ITA was neither a tax nor a duty, the sum requisitioned for the years of assessment 1987 to 1993 was time-barred by Section 6(1)(d) of the LA.

7.0 KERAJAAN MALAYSIA v YONG SIEW CHOON (2006) MSTC 4,197 (FEDERAL COURT)

Facts

The deceased had died intestate on 12 January 1984 and the deceased's widow did not apply for the grant of letters of administration. The deceased's Notices of Assessment for the years of assessment 1984 and 1985 were posted to the widow's last known address. However, she did not pay the taxes that had become payable. The Government then commenced proceedings against the widow for the recovery of the tax due, in her capacity as the legal representative (or "wakil sah") of the deceased.

The Government had obtained judgment against the widow in the High Court, for the sum of RM290,918.17, being tax due for the years of assessment 1984 and 1985. The widow had then appealed to the Court of Appeal, which allowed her appeal on the ground that the Government had failed to comply with the provisions of O 15 r 6A of the Rules of the High Court 1980. The object of O 15 r 6A is to provide a remedy when there is no person in law who can be sued.

Issue

Whether, in view of the provisions of the Income Tax Act 1967 ("ITA"), O 15 r 6A of the Rules of the High Court 1980 was applicable to an action or proceeding raised under Section 106 of the ITA in relation to an assessment in the name of an executor, as defined in the ITA.

Arguments

Taxpayer

That she was not the legal representative of the deceased and as such it was not her responsibility to make the payment of the deceased's taxes to the Government.

Government

That the widow was the legal representative of the deceased and as such was responsible for the taxes of the deceased.

Decision

The High Court allowed the Government's appeal, on the basis that:-

(i) O 15 r 6A of the Rules of the High Court 1980 would have no application if there was, in law, a person who could be sued.

(ii) Sections 64(1) and 74(1) of the ITA are specific provisions to make executors assessable and chargeable to the tax of the estate of the deceased. Proceedings can thus be commenced against an executor for the recovery of the taxes of the deceased that are due and payable.

(iii) In construing Acts of Parliament, words must be taken in their legal sense unless there appears to be a contrary intention. Section 2 of the ITA defines "executor" as "the executor, administrator or other person administering or managing the estate of a deceased person". The reference to "executor" and "administrator" (being persons who are legally appointed) in the definition, suggests that the reference to "other person administering or managing the estate…" refers to one not legally appointed. The ITA has therefore given an extended meaning to the word "executor" by this inclusion.

8.0 EXXON CHEMICAL (MALAYSIA) SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI (2006) MSTC 4,204 (COURT OF APPEAL)

Facts

The taxpayer, Exxon Chemical (Malaysia) Sdn. Bhd., had set up an employee benefit plan. The plan is financed and administered entirely by the taxpayer. Under the plan, employees who had been employed by the taxpayer for at least 11 years would receive a lump-sum payment on retirement, resignation, or termination (except for employees terminated for cause).

The taxpayer sought to deduct the monies set aside for this plan against its taxable income. The DGIR denied the deduction, treating it as gains chargeable to tax since during the period in question, no eligible employee had claimed a payment under the plan.

The Special Commissioners and the subsequently the High Court confirmed the DGIR's position.

Issue

Whether the amount set aside for the benefit plan ranks for deduction under Section 33(1) of the Income Tax Act 1967 ("ITA"). To qualify for a deduction, the outgoing has to be 'wholly and exclusively incurred in the production of gross income' and the issue before the Court of Appeal was whether the taxpayer had 'incurred' the expense.

Arguments

Taxpayer

(i) The taxpayer relied on the Privy Council case of *Commissioner for Inland Revenue v. Lo & Lo* [(1984) 1 WLR 986] which was in relation to the meaning of 'incurred' in Section 16(1) of the Inland Revenue Ordinance of Hong Kong.

(ii) It was held in that case that the meaning of 'incurred' is not only confined to a disbursement but must also include a sum which the taxpayer is under an obligation to pay.

DGIR

(i) The benefit plan was in respect of monies which were never 'incurred'. They are there merely to meet a contingency.

(ii) The case of *Commissioner for Inland Revenue v. Lo & Lo* would not apply as the wording in Section 33(1) of the ITA is different from Section 16(1) of the Inland Revenue Ordinance of Hong Kong.

(iii) Section 33(1) being a taxing statute, should be given a strict construction.

(iv) The DGIR relied on the case of *Owen v. Southern Railway of Peru Ltd.* [(1954) 36 TC 602] where the taxpayer was statutorily required to set aside monies as retirement benefit for the employees.

Decision

The Court of Appeal allowed the appeal by the taxpayer, on the basis that:-

(i) The phrase 'expenses wholly and exclusively incurred' in Section 33(1) of the ITA includes a sum which the taxpayer is under an obligation to pay. This was the proposition established in the *Commissioner for Inland Revenue v Lo & Lo* case.

(ii) The fact that the employees did not actually receive the money in a given year does not matter. If the employees made a claim for the benefit, the taxpayer could not have lawfully resisted such a claim.

(iii) The principle that a provision in a taxing statute must be read strictly is one that is to be applied against the Revenue and not in its favour. If there is any doubt, then it must be resolved in taxpayer's favour.

(iv) This case must be contrasted from the case of *Owen v Southern Railway of Peru Ltd*, which relates to benefits of a statutory scheme as opposed to a voluntary scheme. Further, the case is distinguishable because in the present case and in *Commissioner for Inland Revenue v Lo & Lo*, there is a prescribed length of service.

9.0 SUASANA INDAH SDN BHD (IN MEMBERS' VOLUNTARY LIQUIDATION) v KETUA PENGARAH HASIL DALAM NEGERI (2006) MSTC 4,208 (COURT OF APPEAL)

Facts

The taxpayer is a company that was incorporated in 1981 to provide management services. In 1987, the company extended its business to include real estate. In 1990, the taxpayer entered into a Joint Venture Agreement (JVA) with Syarikat Perniagaan Selangor Sdn Bhd (SPSSB) to carry out a development project on two pieces of land, valued at RM5,300,000 owned by SPSSB. The taxpayer's contribution was by way of services for obtaining approval from relevant authorities for the conversion of usage of the land, the extension of the leasehold period and their subdivision into parcels as the layout plan. The services were valued at RM4,800,000 and were treated as 48% contribution to the project. Therefore, it was provided that the taxpayer and SPSSB had 48% and 52% equity respectively in the project whereby the taxpayer was to contribute RM480,000 and SPSSB RM520,000 as paid-up capital. However, no contribution was actually made by both parties.

In 1992, the JVA was terminated due to disagreement between both parties and a sum of RM2,100,000 was paid as a reimbursement for expenses incurred by the taxpayer and a sum of RM6,400,000 as compensation to terminate the JVA. Subsequently in 1993, the taxpayer was placed under a members' voluntary liquidation.

The DGIR issued a Notice of Assessment under the Income Tax Act 1967 ("ITA") assessing the sum of RM6,400,000.

The taxpayer contended that the sum of RM6,400,000 was either capital withdrawn from the partnership constituted by the JVA upon its dissolution or compensation for loss of all rights under the JVA and therefore was not chargeable to tax. The Special Commissioners and High Court dismissed the taxpayer's appeals and confirmed the DGIR's assessment that the sum was income chargeable to tax under Section 4(a) of the ITA.

The taxpayer then appealed to the Court of Appeal.

Issue

Whether the sum of RM 6,400,000 received by the taxpayer was a capital or a revenue receipt?

Arguments

Taxpayer

(i) The sum of RM6,400,000 was capital withdrawn upon dissolution of a partnership. Whether the taxpayer and SPSSB were a partnership should, notwithstanding article 11.7 of the JVA agreement, be decided on the basis of the definition of "partnership" in Section 2 of the ITA. It was argued that the Special Commissioners and the High Court erred in failing to take the definition into consideration.

(ii) The definition of "partnership" in the ITA does not impose a condition of injecting cash into a partnership. Hence, there could be a withdrawal of capital without any capital in cash having been injected.

(iii) The taxpayer, in contending that the sum of RM6,400,000 was compensation for loss of all rights under the JVA, relied heavily on the test established in Van den Berghs, Ltd, (19 TC 390). The business under the JVA was the taxpayer's only business and that the cancellation of the JVA brought the business to a close. The taxpayer contended that the JVA was vital to their business and any cancellation led to the structure being destroyed.

(iv) The taxpayer contended that the sum of RM6,400,000 received was in regards to the services performed by the taxpayer as part of its contribution to the joint venture and therefore were rendered to the joint venture and not to SPSSB.

DGIR

The DGIR contended that the sum of RM6,400,000 received by the taxpayer was either payment for services rendered or compensation for loss of income as a result of the termination of the contract under Section 22(2)(b) of the ITA and therefore chargeable to tax.

Decision

The taxpayer's appeal was dismissed by the Court of Appeal for the following reasons:-

(i) The definition of "partnership" in Section 2 of the ITA is not applicable for determining at large whether an arrangement between parties is a partnership. That definition is only intended for interpretation when the word is used in the ITA. This is obvious from the opening words of Section 2: "In this Act, unless the context otherwise requires". Therefore, the article 11.7 of the JVA prevailed and be given effect into. Therefore, there was no dissolution of a partnership and the sum of RM6,400,000 was not capital withdrawn upon dissolution of a partnership.

(ii) Since the definition of "partnership" in the ITA does not apply to the relationship between the taxpayer and SPSSB, the taxpayer's argument that relies on that definition must fail. Whether or not there is such requirement for injection of capital, if no capital is injected there can be no withdrawal of it.

(iii) In applying the principles established in the Van den Berghs Ltd, the test of whether the agreement that is cancelled or terminated is "related to the whole structure of the company's profit-making apparatus" is a test of the nature and effect of the agreement and not a test of the consequences of its cancellation. If the agreement is related to the whole structure of the profit-making apparatus of the company, then money that is paid on account of the cancellation of it is capital and if the agreement is not so related, then the money was income, and that is so irrespective of whether the cancellation or termination of the agreement destroys the company's business. In this case, the JVA was a disposal of agreement and not a framework agreement as there was no evidence that the JVA related to the whole structure of the taxpayer's profit-making apparatus. Thus, the sum of RM6,400,000 is an income.

(iv) The services rendered by the taxpayer to SPSSB is seen too "narrowly and artificially" as services rendered to the joint venture. They were in fact services rendered to SPSSB and thus the sum of RM6,400,000 for such services is taxable on the taxpayer.

10.0 MULTI-PURPOSE HOLDINGS BERHAD V KETUA PENGARAH HASIL DALAM NEGERI (2006) MSTC 4,218 (COURT OF APPEAL)

Facts

The taxpayer had two wholly owned subsidiaries namely Dominion Holdings Sdn Bhd (DH) and Goodrich General Sdn Bhd (GG). DH and GG collectively owned 40.68% of the issued and paid-up capital of United Malayan Banking Corporation Bhd ("UMBC"). It has, on 6 July 1984 entered into an agreement with Daan Sdn Bhd and Dani Sdn Bhd ("the Purchasers") wherein the Purchasers will purchase the entire issued and paid-up capital of DH and GG from the taxpayer in exchange for the entire issued and paid-up capital in Aslira Sdn Bhd ("Aslira") and a cash payment of RM132,202,996. Aslira owned 51% of the issued and paid-up capital in Malaysian French Bank Bhd ("MFB"). By this agreement, it was an exchange between the taxpayer and the Purchasers of their respective investments in UMBC and MFB. The shares on exchange here were those of land-based companies as defined in the Share (Land Based Company) Transfer Tax Act 1984 (TTA).

The Agreement was conditional upon obtaining the approval of all relevant and appropriate governmental and regulatory authorities of the Malaysian Government. Pursuant to the condition, the taxpayer therefore applied to the Foreign Investment Committee ("FIC") and the Bank Negara Malaysia ("BNM"). FIC and BNM replied on 3 October 1984 and 8 November 1984 respectively, giving their approval to the transaction. The "Completion Date" of the sale and purchase, as defined in the Agreement, therefore took place on 4 December 1984.

The DGIR raised a notice of assessment dated 29 June 1991 requires the taxpayer to pay the sum of RM15,147,847.10 as share transfer tax under the TTA.

The taxpayer appealed to the Special Commissioners of Income Tax which held in favour of the DGIR as did the High Court. The taxpayer then appealed to the Court of Appeal.

Issue

Whether the provisions of the TTA which were deemed to have come into force on 19 October 1984 applied to the disposal by the taxpayer of the shares pursuant to the Agreement of 6 July 1984, at which point in time the TTA has not yet been enacted.

Arguments

Taxpayer

The taxpayer contended that the TTA did not apply to the disposal of the shares because:

(i) The Agreement was entered into before the TTA came into force on 19 October 1984;

(ii) The Act 323 that amended Section 5 of the TTA with retrospective effect from 19 October 1984 could not apply as the TTA was published in the Gazette only on 9 January 1986.

DGIR

The Agreement was conditional upon obtaining approval from all relevant and appropriate governmental and regulatory authorities. The BNM's letter dated 8 November 1984 that conveyed the Government's approval was the date on which the disposal of the shares was deemed to have taken place. Hence, the DGIR contended that the proviso to Section 5 of the TTA, as amended by Act 323 would apply.

Decision

The taxpayer's appeal was allowed (with a dissenting judgment) on the following basis:

(i) The crucial words in the proviso to Section 5 of the TTA are: that the disposal "…requires the approval by the Government, [etc]". It was not clear whether the proviso referred to a requirement imposed by law or a requirement of the term of the agreement of disposal. This ambiguity must therefore be construed in favour of the taxpayer.

Adopting the approach to the interpretation of a provision in a taxing statute in Mangin v Inland Revenue Commissioners [1971], the requirement in the proviso to Section 5 would refer to a requirement imposed by law and there was no such law.

(ii) If the DGIR was correct to say that the TTA applied to the taxpayer, it meant that the taxpayer would have had to comply with several other provisions including Section 9, which required the tax return to be filed within one month from the date of BNM's approval, that is not later than 7 December 1984. However, that would be a physically impossibility because the TTA was not passed by

Parliament until 31 December 1984. Yet the taxpayer would have breached a provision of the TTA that attracts penal consequences. Also the Purchasers would be unable to comply with their obligations under Section 15 of the TTA. The consequences were practically unjust.

(iii) The TTA must be read harmoniously with the first limb of Article 7(1) of the Federal Constitution. The Article reads : "7.(1) No person shall be punished for an act or omission which was not punishable by law when it was done or a made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed". This approach is in keeping with the presumption that Parliament did not intend its Acts to violate the constitution. The TTA must therefore, be read prospectively to prevent the taxpayer and those similarly circumstanced from being retrospectively criminally liable and avoid an infringement of the taxpayers' fundamental rights.

(iv) The golden rule in the field of statutory interpretation was that there are no rules governing statutory interpretation, only approaches to, assumptions and principles of interpretation. The task of the court was to ascertain the correct meaning and purport of a statute. So long as it achieved that task, it did not matter what route it adopted to arrive at its destination.

GAZETTE NOTIFICATIONS AMENDMENTS TO : INCOME TAX ACT 1967 PETROLEUM INCOME TAX ACT 1967 REAL PROPERTY GAINS TAX ACT 1976 PROMOTION OF INVESTMENT ACT 1986 STAMP ACT 1949

Gazette Notifications in 2005 (Jan 2005 to Dec 2005)

- Income Tax Act 1967 (all gazette orders)
- Petroleum Income Tax Act 1967 (only general gazette orders)
- Real Property Gains Tax Act 1976 (only general gazette orders)
- Promotion Of Investment Act 1986 (only general gazette orders)
- Stamp Act 1949 (only general gazette orders)

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
1	Income Tax (Returns by Employers) Order 2005	2	6.1.2005	Employers Return for year 2004.	14.12.2001
2	Income Tax (Exemption) Order 2005	4	6.1.2005	Non-resident assignee and transferee of the Banks referred in the Facility Agreement dated 14 December 2001 in respect of the Banks' liability to make payment of the tax under section 109 of the Act in respect of the interest earned by it under the Facility Agreement, are exempted from payment income tax.	14.12.2001
3	Stamp Duty (Exemption) Order 2005	6	6.1.2005	Any instruments relating to an assignment and transfer made by the Banks referred in the Facility Agreement dated 14 December 2001 in respect of th rights and obligations of the Banks under the said Agreement, are exempted from the stamp duty.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
4	Income Tax (Exemption) (No.2) Order 2005	11	13.1.2005	Income received by foreign artists specified in the Schedule of the gazette order for their show of "Annie The Musical" held at the Genting International Showroom from 28 May 2004 until 17 June 2004, are exempted from payment of income tax.	–
5	Income Tax (Exemption) (No.3) Order 2005	12	13.1.2005	Income received by foreign artists specified in the Schedule of the gazette order for their show of "The Ten Tenors" held at the Genting International Showroom from 20 May 2004 until 22 June 2004, are exempted from payment of income tax.	–
6	Income Tax (Exemption) (No.4) Order 2004	13	13.1.2005	Income received by foreign artists specified in the Schedule of the gazette order for their show of "Jamie Teo & Nick Shen" held at the Danga Bay, Johor Bahru on 24 January 2004, are exempted from payment of income tax.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
7	Income Tax (Exemption) (No.5) Order 2005	14	13.1.2005	Income received by foreign artists specified in the Schedule of the gazette order for their show of "Gareth Gates-Go Your Own Tours 2004" held at the Bukit Kiara Equestrian & Country Resort on 8 April 2004, are exempted from payment of income tax.	–
8	Income Tax (Exemption) (No.6) Order 2005	35	3.2.2005	Income received by Perbadanan Kemajuan Tanah Adat Melaka from sources of income specified in the Schedule of the gazette order from the year of assessment 1998 until the year of assessment 2001, are exempted from payment of income tax.	YA 1998
9	Income Tax (Exemption) (No.7) Order 2005	36	3.2.2005	Income received by Perbadanan Nasional Berhad in form of grants given by Federal Government and State Government from the year of assessment 2000 in respect of the basis period ending in the year 2000 until the year of assessment 2001, are exempted from payment of income tax.	YA 2000 (basis period ending in the year 2000)

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
10	Income Tax (Exemption) (No.8) Order 2005	37	3.2.2005	Income received by Yayasan Melaka from sources of income specified in the Schedule of the gazette order, are exempted from payment of income tax.	YA 2001
11	Income Tax (Exemption) (No.9) Order 2005	38	3.2.2005	Income received by Yayasan Selangor in form of grants or subsidies given by Federal Government and State Government from the year of assessment 2000 in respect of the basis period ending in the year 2000 until the year of assessment 2001, are exempted from payment of income tax.	YA 2000 (basis period ending in the year 1999)
12	Income Tax (Exemption) (No.10) Order 2005	39	3.2.2005	Income received by financial institutions specified in column (1) of the Schedule in respect of gross income earned from monies deposited by Bank Negara Malaysia in relation to the Financial Assistance Scheme and eighty per cent of the gross proceeds from recoveries of nonperforming loans that were acquired from financial institutions specified in column (3) of the Schedule, are exempted from payment of income tax.	YA 2002

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
13	Income Tax (Exemption) (No.11) Order 2005	75	24.2.2005	Statutory income on all sources of income of a venture capital company other than interest income arising from savings of fixed deposits and profits from syariah- based deposits are exempted from the payment of income tax for ten years of assessment or the years of assessment equivalent to the life of the fund established for the purposes of investing in a venture company, whichever is the lesser.	YA 2003
14	Income Tax (Deduction for Investment in A Venture Capital Company) Rules 2005	76	24.2.2005	A company or an individual, who is resident in Malaysia from his business, shall be allowed a deduction an amount equivalent to the value of investment made in the basis period in a venture company.	YA 2003
15	Income Tax (Exemption) (No.12) Order 2005	77	24.2.2005	Statutory income from the share of profits received by a venture capital management company (that is registered with the Securities Commission) from a Venture Capital Company, are exempted from payment of income tax.	YA 2003

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
16	Double Taxation Relief (The Government of the Republic of Chile) Order 2005	84	3.3.2005	Agreement between the Government of Malaysia and the Government of the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income.	–
17	Income Tax (Accelerated Capital Allowance) (Power Quality Equipment) Rules 2005	87	3.3.2005	Accelerated Capital Allowance in respect of qualifying plant expenditure incurred on the provision of equipment as certified by the Ministry of Energy, Water and Communications, Malaysia as equipment used for its own business exclusively to control the quality of electric power.	YA 2005
18	Income Tax (Accelerated Capital Allowance) (Renewable Energy) Rules 2005	88	3.3.2005	Accelerated Capital Allowance in respect of qualifying plant expenditure incurred on the provision of plant or machinery as certified by the Ministry of Energy, Water and Communications, Malaysia used exclusively to generate energy using renewable energy resources for its own business.	YA 2005

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
19	Income Tax (Exemption) (No.13) Order 2005	102	24.3.2005	A non-resident company is exempted from payment of income tax in respect of income received from the approved MSC status company as follow: (a) payment for technical advice or technical services; (b) licensing fees in relation to technology development; and (c) interest on loans for technology development.	1.10.2002
20	Income Tax (Exemption) (No.14) Order 2005	103	24.3.2005	Income from a source consisting of the provision of qualifying professional services rendered in Labuan by a person to an offshore company from YA 2000 (year ending 2000) until YA 2004, are exempted from payment of income tax on 65% of the statutory income.	YA 2000 (year ending 2000)
21	Income Tax (Exemption) (No.15) Order 2005	104	24.3.2005	Statutory income on all sources of income other than dividend income received by Badan Amal Tenaga Wakil-Wakil Rakyat Negeri Johor, are exempted from payment of income tax.	YA 1994 - YA 2001

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
22	Income Tax (Exemption) (No.16) Order 2005	105	24.3.2005	50% of statutory income from all sources of income other than dividend income received by Motor Insurers' Bureau Of West Malaysia, are exempted from payment of income tax.	YA 2004 - YA 2006
23	Promotion of Investments (Promoted Activities and Promoted Products for High Technology Companies) (Amendment) Order 2005	109	17.1.2005	Schedule of Promotion of Investments (Promoted Activities and Promoted Products for High Technology Companies) Order 1995 [P.U.(A) 32/1995] has been amended to include the following new products under the heading of "Advanced electronics":-	
				- Development and production of cathode ray tubes and advanced displays.	1.11.2001
				- Design, development and manufacture of printer heads, head gimbals/head carriages, headstacks, magnetic heads, voice coil motors and actuators.	22.8.2002
				- Development and production of advanced connectors.	5.5.2003

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
				- Development and manufacturing of high density interconnect printed circuit boards (PCB) excluding rigid singlesided PCB.	11.12.2003
				In addition, the Schedule has been amended to insert new industries and its related products/activities as follows:-	
				- Design, development and manufacture of trim and form dies, semiconductor cavity/ encapsulation moulds, suspension tooling for hard disk drive parts, progressive tooling for lead frames, fibre optic connector tooling [under the heading of "Engineering support industries/services"].	As specified in the Schedule
				- Design, development and manufacture of advanced tooling and equipment for the production of precision components/ parts for industrial applications [under the heading of "Engineering support industries/services"].	As specified in the Schedule

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
				- Development and production of precision machined and die cast parts using advanced manufacturing systems [under the heading of "Engineering support industries/services"].	25.4.2003
				- Development, testing and processing of engineered wood products [under the heading of "Wood processing"].	3.10.2003
24	Income Tax (Accelerated Capital Allowance) (Renewable Energy) Rules 2005	115	31.3.2005	Corrigendum to P.U (A) 88, amending the annual allowance rate to four-fifth of the qualifying plant expenditure.	–
25	Income Tax (Exemption) (No.17) Order 2005	158	14.4.2005	Income derived from export sales by local company resident in Malaysia and carrying on activities of manufacturing or agriculture is exempted from payment of income tax. The amount of income exempted shall be an amount equal to: (a) 30 per cent of the value of increased exports where a company has achieved a significant increase in export; (b) 50 per cent of the value of increased	YA 2003

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
				exports where a company has penetrated new markets; and (c) 100 per cent of the value of increased exports where a company has been awarded the Export Excellence Award.	
26	Stamp Duty (Exemption) (No.6) Order 2005	182	5.5.2005	All instruments of agreement for merger or acquisition executed pursuant to an approved scheme of merger or acquisition of higher educational institutions executed on or between 11 September 2004 until 31 December 2006, are exempted from stamp duty.	–
27	Income Tax (Accelerated Capital Allowance) Machinery and Equipment for Agriculture Sector) Rules 2005	188	12.5.2005	Accelerated Capital Allowance in respect of qualifying plant expenditure incurred on the provision of machinery and equipment as determined by the Minister used for the purpose of its agriculture business.	YA 2005
28	Income Tax (Exemption) (No.18) Order 2005	189	12.5.2005	(a) All income from trust share transaction; (b) 50% of all other income other than income in relation to trust shares transactions; received by Permodalan Nasional Berhad from the year of assessment	YA 2000 (basis period ending in the year 1999)

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
				2000 (basis period ending in the year 1999) until year of assessment 2006, are exempted from payment of income tax.	
29	Income Tax (Exemption) (No.19) Order 2005	190	12.5.2005	Income derived from members' subscription fees received by a trade association resident in Malaysia, are exempted from payment of income tax.	YA 2005
30	Income Tax (Exemption) (No.20) Order 2005	193	12.5.2005	Income other than dividend income received by International Centre For Leadership In Finance, are exempted from payment of income tax.	YA 2003 - YA 2007
31	Income Tax (Exemption) (No.21) Order 2005	194	12.5.2005	Income received by Amanah Saham Nasional from the year of assessment 2000 (basis period ending in the year 1999) until the year of assessment 2006, are exempted from payment of income tax.	YA 2000 (basis period ending in the year 1999)
32	Income Tax (Exemption) (No.22) Order 2005	195	12.5.2005	All income received by Amanah Saham Nasional 2 from the year of assessment 2000 (basis period ending in the year 1999) until the year of assessment 2006, are exempted from payment of income tax.	YA 2000 (basis period ending in the year 1999)

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
33	Income Tax (Exemption) (No.23) Order 2005	196	12.5.2005	All income received by Amanah Saham Wawasan 2020 from the year of assessment 2000 (basis period ending in the year 2000) until the year of assessment 2006, are exempted from payment of income tax.	YA 2000 (basis period ending in the year 2000)
34	Income Tax (Exemption) (No.24) Order 2005	197	12.5.2005	All income received by Amanah Saham Malaysia from the year of assessment 2000 (basis period ending in the year 2000) until the year of assessment 2006, are exempted from payment of income tax.	YA 2000 (basis period ending in the year 2000)
35	Income Tax (Exemption) (No.25) Order 2005	198	12.5.2005	Income received by foreign artists James David William Campbell, holder of passport number 070461469, citizen of Great Britain for his show of "James Campbell's Comedy Kids" held in Penang on 11 February 2004, in Bangsar, Kuala Lumpur from 13 February 2004 until 15 February 2004 and Ipoh, Perak from 17 March 2004 until 18 March 2004, are exempted from payment of income tax.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
36	Double Taxation Relief (The Government of the Republic of Singapore) Order 2005	200	19.5.2005	Agreement between the government of Malaysia and the government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.	–
37	Income Tax (Exemption) (No.26) Order 2005	227	16.6.2005	All income other than dividend income received by Institut Terjemahan Negara Malaysia Berhad, are exempted from payment of income tax.	YA 2004 - YA 2008
38	Income Tax (Exemption) (No.27) Order 2005	233	23.6.2005	Chargeable income equivalent to the amount of financial grant paid to Bernas Production Sdn Bhd as specified in Schedule from the year of assessment 2001 until the year of assessment 2003, are exempted from payment of income tax.	YA 2001
39	Income Tax (Exemption) (No.40) Order 2004	234	23.6.2005	Income received by foreign artistes specified in the Schedule of gazette order for their show of "Womenly Voices" and show "30 Days In September" held at The Actors Studio Bangsar, Kuala Lumpur from 27 July 2004 until 29 July 2004 and from 30 July 2004 until 31 July 2004 respectively, are exempted from payment of income tax.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
40	Income Tax (Exemption) (No.29) Order 2005	235	23.6.2005	Income received by non-resident individual specified in the Schedule of gazette order for their show "Carmen" held at the Dewan Sri Pinang, Penang from 10 December 2004 until 11 December 2004 and at the Istana Budaya Kuala Lumpur from 17 December 2004 until 19 December 2004, are exempted from payment of income tax.	–
41	Income Tax (Exemption) (No.30) Order 2005	236	23.6.2005	Income received by Lembaga Kemajuan Ikan Malaysia from sources of income specified in the Schedule of the gazette order, are exempted from payment of income tax.	YA 2001
42	Stamp Duty (Exemption) (No.9) Order 2005	238	23.6.2004	All instrument pursuant to a scheme of transfer of the Islamic banking business and/or the Islamic financial business by a licensed institution to its related corporation licensed or to be licensed under the Islamic Banking Act 1983 are exempted from stamp duty provided that such scheme of transfer has been approved by the Minister on the	1.3.2005

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
				recommendation of the Central Bank of Malaysia pursuant to subsection 49(7) of the Banking and Financial Institutions Act 1989.	
43	Income Tax (Exemption) (No.31) Order 2005	250	7.7.2005	Income received by Pengurusan Danaharta Nasional Berhad and its wholly owned subsidiaries as specified in the Schedule of the gazette order, are exempted from payment of income tax.	YA 2004 - YA 2005
44	Income Tax (Deduction for Contribution for Sponsoring Malaysia's Participation in an International Exhibition) Rules 2005	253	14.7.2005	A qualifying resident company shall be allowed a deduction an amount equivalent to the a moount of contribution made from 4 February 2005 until 31 October 2005 for the sole purpose of sponsoring Malaysia's participant in the "Bureau International Exhibition World Expo 2005" held in Aichi, Japan.	4.2.2005
45	Income Tax (Exemption) (No.32) Order 2005	254	14.7.2005	Income received by Malaysian Valuers, Appraisers and Estate Agents Board from sources of income specified in the Schedule of the gazette order, are exempted from payment of income tax.	YA 2000 (basis period ending in the year 2000)

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
46	Income Tax (Exemption) (No.33) Order 2005	255	14.7.2005	Income other than dividend income received by Cyberview Sdn. Bhd., are exempted from payment of income tax.	YA 2001 - YA 2005
47	Income Tax (Exemption) (No.34) Order 2005	256	14.7.2005	Income received by Energy Commission from sources of income acquired as stated in gazette order, are exempted from payment of income tax.	YA 2001
48	Income Tax (Exemption) (No.35) Order 2005	265	21.7.2005	Income received by foreign artistes specified in the Schedule of gazette order for their show of "Pluck" held at the The Actors Studio Bangsar, Kuala Lumpur from 4 Sepember 2004 until 19 September 2004, are exempted from payment of income tax.	–
49	Income Tax (Exemption) (No.36) Order 2005	266	21.7.2005	Income received or derived by qualifying person from management of public cemeterial ground, are exempted from payment of income tax.	YA 2004

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
50	Income Tax (Deduction for Investment in a Project of Commercialisation of research and Development Findings) Rules 2005	269	28.7.2005	A resident company incorporated under the Companies Act 1965 [*Act* 125], shall be allowed a deduction an amount equivalent to the value of investment made for the sole purpose of financing a project on commercialisation of research and development findings in a related company.	11.9.2004
51	Income Tax (Deduction for Promotion of Export of Professional Services) (Amendment) Rules 2005	270	28.7.2005	Amendments to Income Tax (Deduction for Promotion of Export of Professional Services) Rules 2003 [P.U. (A) 124/2003] in relation to subrule 4(2).	YA 2005
52	Income Tax (Deduction for Promotion of Export of Services) (Amendment) Rules 2005	271	28.7.2005	Amendments to Income Tax (Deduction for Promotion of Export of Services) Rules 1999 [P.U. (A) 193/1999] in relation to paragraph 3 and 4.	YA 2005
53	Income Tax (Deduction for Promotion of Export of Services) (Amendment) (No.2) Rules 2005	272	28.7.2005	Amendments to Income Tax (Deduction for Promotion of Export of Services) Rules 1999 [P.U. (A) 114/2002] in relation to paragraph 3 and 4.	YA 2005

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
54	Income Tax (Exemption) (No.37) Order 2005	286	11.8.2005	All dividends received from United Engineers (M) Sdn. Bhd. by Danasaham form the year of assessment 2002 until the year of assessment 2006, are exempted from payment of income tax.	YA 2002
55	Income Tax (Exemption) (No.38) Order 2005	287	11.8.2005	Income received by National Productivity Corporation from sources of income specified in the Schedule, are exempted from payment of income tax.	YA 2001
56	Income Tax (Exemption) (No.39) Order 2005	288	11.8.2005	Income received by insurance companies which carry on life business and the operators which operate family solidarity business as specified in the Schedule from sources of income derived from the Employees Provident Fund Annuity Scheme Fund which is managed by them, are exempted from payment of income tax.	YA 2000
57	Income Tax (Qualifying Farm Expenditure) Rules 2005	289	11.8.2005	Approved forest plantation project as specified under item 3 of the First Schedule to the Income Tax (Approved	YA 2005

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
				Agriculture Projects) Order 2002 [P.U. (A) 61/2002] shall include capital expenditure incurred on: (a) cost of preparing the forest management plan; (b) cost of Environmental Impact Asesssment; (c) fees related to the procurement of timber certification; and (d) cost of surveying.	
58	Income Tax (Exemption) (No.40) Order 2005	307	25.8.2005	Income received by operational headquarters company for a period of ten years of assessment commensing from a year of assessment in which the date of approval falls in the basis period of that year of assessment, are exempted from payment of income tax.	YA 2003
59	Income Tax (Exemption) (No.41) Order 2005	308	25.8.2005	Income received by regional distribution centre company for a period of ten years of assessment, are exempted from payment of income tax.	YA 2003

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
60	Income Tax (Exemption) (No.42) Order 2005	309	25.8.2005	Income received by international procurement centre company for a period of ten years of assessment, are exempted from payment of income tax.	YA 2003
61	Income Tax (Exemption) (No.43) Order 2005	310	25.8.2005	Income received by Persatuan Kebangsaan Pekebun-Pekebun Kecil Malaysia from the Malaysian Rubber Producers' Council amounting to RM3,900,754.62 in connection with its liquidation on 30 June 2002, are exempted from payment of income tax.	30.6.2002
62	Income Tax (Exemption) (No.44) Order 2005	311	25.8.2005	Income other than dividend income received by International Centre For Leadership In Finance Trudt Fund (ICLIF Trust Fund), are exempted from payment of income tax.	YA 2003 - YA 2007
63	Stamp Duty (Exemption) (No.3) (Amendment) Order 2005	313	25.8.2005	Amendments to the Stamp Duty (Exemption) (No.23) Order 2000 [P.U. (A) 241/2000], in paragraph 2.	3.7.2004

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
64	Stamp Duty (Exemption) (No.4) (Amendment) Order 2005	314	25.8.2005	Amendments to the Stamp Duty (Exemption) (No.24) Order 2001 [P.U. (A) 226/2001], in paragraph 2.	3.7.2004
65	Income Tax (Deduction for Expenditure on Issuance of Islamic Securities) Rules 2005	320	1.9.2005	A deduction shall be allowed for an amount equal to the expenditure incurred on the issuance of Islamic securities from 3 July 2004 until the year of assessment 2007.	3.7.2004
66	Income Tax (Deduction for Expenditure on Issuance of Asset Backed Securities) Rules 2005	321	1.9.2005	A deduction shall be allowed for an amount equal to the expenditure incurred on the issuance of asset backed securities from 3 July 2004 until the year of assessment 2007.	3.7.2004
67	Income Tax (Deduction for Expenditure on Issuance of Islamic Securities Pursuant to Istisna' Principle) Rules 2005	322	1.9.2005	A deduction shall be allowed for an amount equal to the expenditure incurred on the issuance of Islamic securities pursuant to istisna' principle from 3 July 2004 until the year of assessment 2007.	3.7.2004
68	Income Tax (Exemption) (No.45) Order 2005	323	1.9.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of "The Merry Widow" held at the	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
				Istana Budaya Kuala Lumpur from 20 August 2004 until 22 August 2004, are exempted from payment of income tax.	
69	Income Tax (Exemption) (No.46) Order 2005	324	1.9.2005	Income other than dividend income received by Malaysian Integrity Institute (IIM) from the year of assessment 2004 until the year of assessment 2008, are exempted from payment of income tax.	YA 2004 - YA 2008
70	Promotion of Investments (Promoted Activities and Promoted Products for Small Scale Companies) (Amendment) (No. 2) Order 2005	366	26.8.2005	Schedule of Promotion of Investments (Promoted Activities and Promoted Products for Small Scale Companies) Order 1998 [P.U.(A) 81/1998] has been amended to include the following new products:- - Testing equipment and energy saving lighting and/or display [under the heading of "Assembly and manufacture of electrical and electronic products and components and parts thereof"].	3.2.2005

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
				- Geosystems products (cellular confinement system) [under the heading of "Manufacture of plastic products"].	13.1.2005
71	Promotion of Investments (Promoted Activities and Promoted Products for High Technology Companies) (Amendment) (No. 2) Order 2005	367	26.8.2005	Schedule of Promotion of Investments (Promoted Activities and Promoted Products for High Technology Companies) Order 1995 [P.U.(A) 32/1995] has been amended to include the following new products:-	
				- Design, development and manufacture of Eletro-Magnetic Interference (EMI) shielding products [under the heading of "Advanced electronics"].	11.3.2005
				- Design, development and manufacture of contra rotator washing machines [under the heading of "Advanced electronics"].	13.10.2005

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
72	Promotion of Investments (Promoted Activities and Promoted Products) (Amendment) (No. 2) Order 2005	368	30.8.2005	- Design, development and manufacture of air flow equipment and related products [under the heading of "Equipment/instrumentation"]. First Schedule of Promotion of Investments (Promoted Activities and Promoted Products) Order 1995 [P.U.(A) 31/1995] has been amended to include the following new products:- - Crude palm kernel oil and palm kernel cake/expeller, palm based nutraceuticals, constituents of palm oil/palm kernel oil; palm-based food products; processed products from palm fatty acid distillate/palm kernel fatty acid distillate, palm kernel cake/ expeller and palm oil mill effluent; products from palm biomass [under the heading of "Manufacture of oil palm products and their derivatives"].	11.3.2005 As specified in the Schedule

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
				- Crystallized glass panels [under the heading of "Manufacture of clay-based, sand-based and other non-metallic mineral products"].	14.10.2004
				- Personal ballistic armour [under the heading of "Miscellaneous"].	29.7.2004
				In addition, the Schedule has been amended to insert a new industry and its related products as follows:	
				- Animal feed, kenaf particle or fibre, reconstituted panel, board or products and moulded products [under the heading of "Manufacture of kenaf based product"].	9.12.2004
73	Income Tax (Deduction for Cash Contribution and Sponsor of a Cultural or Arts Show Held in Federal Territory Kuala Lumpur) Order 2005	380	6.10.2005	A company incorporated under the Companies Act 1965 [Act 125] shall be allowed a deduction equivalent to the amount of cash contribution and sponsorship in cultural or arts show which is held in Federal Territory Kuala Lumpur.	YA 2005

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
74	Double Taxation Relief (The Government of The Republic of South Africa) Order 2005	385	13.10.2005	Agreement between the government of Malaysia and the governemnt of the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes income.	–
75	Income Tax (Exemption) (No.47) Order 2005	386	13.10.2005	Income received by Cedair Leasing S.A.L (Off Shore) on lease rental payment from the Malaysia Airlines System Berhad pursuant to the aircraft Lease Agreement dated 31 October 2004, are exempted from payment of income tax.	17.12.2003
76	Income Tax (Deduction for Unemployed Graduates Allowances) Rules 2005	387	13.10.2005	A resident banking institution or an insurance company or a takaful business operator shall be allowed a deduction of amount of allowances paid to trainee for undergoing training programme for the period from 1 February 2004 until 31 January 2007.	1.2.2004
77	Income Tax (Exemption) (No.48) Order 2005	428	27.10.2005	Income received by Malaysian Cocoa Board for sources of income specified in the Schedule, are exempted from payment of income tax.	YA 2001

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
78	Income Tax (Exemption) (No.49) Order 2005	429	27.10.2005	Income received by Total Solution Technology Sdn. Bhd. In the form of grants given by the Ministry Of Science, Technology and Environment under the IGS 12/98 Agreement from 1 January 2001 until 31 December 2001, are exempted from payment of income tax.	1.1.2001 - 31.12.2001
79	Income Tax (Exemption) (No.50) Order 2005	430	27.10.2005	Income received by Sabah Foresty Development Authority (SAFODA) for sources of income specified in the Schedule, are exempted from payment of income tax.	YA 2001
80	Income Tax (Exemption) (No.51) Order 2005	439	3.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Balagan* held at the Alamanda, Putrajaya on 4 October 2004, are exempted from payment of income tax.	–
81	Income Tax (Exemption) (No.52) Order 2005	440	3.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *The Return Of Shaolin Kungfu Masters* 2004 held at the Stadium Bukit Jalil, Kuala Lumpur from 15 December 2004 until 16 December 2004, are exempted from payment of income tax.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
82	Income Tax (Exemption) (No.53) Order 2005	441	3.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Concert For Tsunami Aid* held at the Stadium Putra Bukit Jalil, Kuala Lumpur on 18 March 2004, are exempted from payment of income tax.	–
83	Income Tax (Exemption) (No.54) Order 2005	442	3.11.2005	Income received by non-resident individual specified in the Schedule of the gazette order for their show of *12 Girls Band-Miracle Live in Malaysia* held at the Arena Of Star, Genting Highlands, Pahang on 13 June 2004, are exempted from payment of income tax.	–
84	Income Tax (Exemption) (No.55) Order 2005	443	3.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Peter Pan - The Musical* held at the Genting International Showroom, Genting Highlands, Pahang from 26 November 2004 until 18 December 2004, are exempted from payment of income tax.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
85	Income Tax (Exemption) (No.56) Order 2005	444	3.11.2005	Income received by foreign artiste Jovianney Emmanuel Villanueza Cruz, holder of Passport Number ZZ097066 for his show of *Festival Piano Antarabangsa Ke*-11 held at the Panggung Bandaraya, Kuala Lumpur on 11 April 2004, are exempted from payment of income tax.	–
86	Income Tax (Exemption) (No.57) Order 2005	445	3.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Nur-Riwayat Kalbu: Recital Of The Souls* held from 9 October 2004 until 12 October 2004, are exempted from payment of income tax.	–
87	Income Tax (Exemption) (No.58) Order 2005	446	3.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Linkin Park* held at the Stadium Merdeka, Kuala Lumpur on 15 October 2003, are exempted from payment of income tax.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
88	Income Tax (Exemption) (No.59) Order 2005	447	3.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Vienna Boys Choir* held at the Genting Highlands, Pahang from 30 October 2004 until 31 October 2004, are exempted from payment of income tax.	–
89	Income Tax (Exemption) (No.60) Order 2005	454	10.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Pinocchio On Ice* 2004 held at the Stadium Negara, Kuala Lumpur from 8 July 2004 until 13 July 2004, are exempted from payment of income tax.	–
90	Income Tax (Exemption) (No.61) Order 2005	455	10.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Black Eyes Peas* held at the Bukit Kiara Equestrian & Country Resort, Kuala Lumpur on 28 May 2004, are exempted from payment of income tax.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
91	Income Tax (Exemption) (No.62) Order 2005	456	10.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Kumpulan Incubus* held at the Bukit Kiara Equestrian & Country Resort, Kuala Lumpur on 16 March 2004, are exempted from payment of income tax.	–
92	Income Tax (Exemption) (No.63) Order 2005	457	10.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Xiamen Symphony Orchestra* held at the Dewan Tunku (Geodesic Dome), KOMTAR, Pulau Pinang from 5 December 2003 until 6 December 2003 and at the Then Hou Temple, Kuala Lumpur on 9 December 2003, are exempted from payment of income tax.	–
93	Income Tax (Exemption) (No.64) Order 2005	458	10.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show *Diana Krall* held at the Grand Ballroom Mandarin Oriental, Kuala Lumpur on 17 March 2005, are exempted from payment of income tax.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
94	Income Tax (Exemption) (No.65) Order 2005	459	10.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Maksim The Piano Player - Asian Tour* 2004 held at the Stadium Putra Bukit Jalil, Kuala Lumpur on 22 April 2004, are exempted from payment of income tax.	–
95	Income Tax (Exemption) (No.66) Order 2005	460	10.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Ronan Keating* held at the Arena Of Star, Genting Highland on 15 February 2003, are exempted from payment of income tax.	–
96	Income Tax (Exemption) (No.67) Order 2005	461	10.11.2005	Income received by foreign artistes specified in the Schedule of the gazette order for their show of *Philip International Jazz Festival* 2003 held at the Bukit Kiara Equestrian & Country Resort, Kuala Lumpur on 6 December 2004, are exempted from payment of income tax.	–
97	Income Tax (Exemption) (No.68) Order 2005	462	10.11.2005	Income received as specified in the Schedule of the gazette order by Johor Corporation and its subsidiaries commencing from 1 January 1998 until 31 December 2006, are exempted from payment of income tax.	1.1.1998

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
98	Income Tax (Deduction for Incorporation Expenses) (Amendment) Rules 2005	472	17.11.2005	Amendments to Income Tax (Deduction for Incorporation Expenses) Rules 2003 [P.U. (A) 475/2003] in paragraph 2.	YA 2004
99	Promotion of Investments (Promoted Activities and Promoted Products for High Technology Companies) (Amendment) (No. 3) Order 2005	482	18.10.2005	Schedule of Promotion of Investments (Promoted Activities and Promoted Products for High Technology Companies) Order 1995 [P.U.(A) 32/1995] has been amended to include the following new products:-	
				- Design, development and manufacture of printer mechanism [under the heading of "Advanced electronics"].	7.4.2004
				- Development and production of surface mount components [under the heading of "Advanced electronics"].	25.11.2004
				- Nano particles and their formulations thereof [under the heading of "Advanced material"].	14.10.2004
				- Design, development and manufacture of moulds, tools and dies for automotive industry [under the heading of "Engineering support industries/services"].	27.2.2004

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
100	Promotion of Investments (Promoted Activities and Promoted Products for Small Scale Companies) (Amendment) (No. 3) Order 2005	483	18.10.2005	Schedule of Promotion of Investments (Promoted Activities and Promoted Products for Small Scale Companies) Order 1998 [P.U.(A) 81/1998] has been amended to include the following new products:-	
				- Oleochemicals or oleochemical derivatives or preparations [under the heading of "Manufacture of palm oil and palm kernel oil products and their derivatives"].	5.8.2004
				- Bio-resin (biopolymer) [under the heading of "Manufacture of chemicals and pharmaceuticals"].	30.1.2004
				- Inkjet inks [under the heading of "Manufacture of chemicals and pharmaceuticals"].	5.8.2004
				- Measurement or scale instrument [under the heading of "Assembly and manufacture of electrical and electronic products and components and parts thereof"].	30.1.2004

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
				- Security equipment, components and part thereof [under the heading of "Assembly and manufacture of electrical and electronic products and components and parts thereof"].	21.10.2004
				- Microbials and probiotics [under the heading of "Miscellaneous"].	28.10.2004
				- Epoxy encapsulation moulding compound [under the heading of "Manufacture of plastic products"].	1.4.2004
101	Stamp Duty (Exemption) (No.27) Order 2005	484	24.11.2005	All instruments of deed of assignment executed between a Real Estate Investment Trust or a Property Trust Fund approved by the Securities Commission and the disposer relating to the purchase of real property, are exempted from stamp duty.	–

PART II

INVESTMENT REVIEW

A Approval of Manufacturing Projects & Incorporating a Company

1.0 APPROVAL OF MANUFACTURING PROJECTS

1.1 The Industrial Co-ordination 1975

Malaysia's Industrial Co-ord9ination Act 1975 (ICA) aims to secure orderly development and growth in the country's manufacturing sector.

The ICA requires manufacturing companies with shareholders' funds of RM2.5 million and above or engaging 75 or more fulltime employees to apply for a manufacturing licence for approval by the Ministry of International Trade and Industry (MITI).

Applications for manufacturing licences are to be submitted to the Malaysian Industrial Development Authority (MIDA), an agency under MITI in charge of the promotion and coordination of industrial development in Malaysia.

The ICA defines:

- "Manufacturing activity" as the making, altering, blending, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; and includes the assembly of parts and ship repairing but shall not include any activity normally associated with retail or wholesale trade.
- "Shareholders' funds" as the aggregate amount of a company's paid-up capital, reserves, balance of share premium account and balance of profit and loss appropriation account, where:
    - Paid-up capital shall be in respect of preference shares and ordinary shares and not including any amount in respect of bonus shares to the extent they were issued out of capital reserve created by revaluation of fixed assets.

- Reserves shall be reserves other than any capital reserve created by revaluation of fixed assets and provisions for depreciation, renewals or replacements and diminution in value of assets.
- Balance of share premium account shall not include any amount credited therein at the instance of issuing bonus shares at premium out of capital reserve by revaluation of fixed assets.

• "Full-time paid employees" as all persons normally working in the establishment for at least six hours a day and at least 20 days a month for 12 months during the year and who receive a salary.

This includes travelling sales, engineering, maintenance and repair personnel who are paid by and are under the control of the establishment.

It also includes directors of incorporated enterprises except those paid solely for their attendance at board of directors meetings. The definition encompasses family workers who receive regular salaries or allowances and who contribute to the Employees Provident Fund (EPF) or other superannuation funds.

1.2 Guidelines for Approval of Industrial Projects

Malaysia's industrial growth has been rapid over the last decade. This has created a high demand for labour in the manufacturing sector which, in turn, has caused a tightening in the labour market situation.

In view of this, the government's guidelines for approval of industrial projects in Malaysia are based on the Capital Investment Per Employee (C/E) Ratio. Projects with a C/E Ratio of less than RM55,000 are categorised as labour-intensive and thus will not qualify for a manufacturing licence or for tax incentives. Nevertheless, a project will be exempted from the above guidelines if it fulfils one of the following criteria:

• The value-added is 30% or more

• The Managerial, Technical and Supervisory (MTS) Index is 15% or more

• The project undertakes promoted activities or products as listed in the List of Promoted Activities/ Products - High Technology Companies

- It is located in the Eastern Corridor of Peninsular Malaysia (the states of Kelantan, Terengganu, Pahang and the district of Mersing in Johor), Sabah and Sarawak.

1.3 Expansion of Production Capacity and Product Diversification

A licensed company which desires to expand its production capacity or to diversify its product range by manufacturing additional products will need to apply to MIDA.

2.0 INCORPORATING A COMPANY

2.1 Methods of Conducting Business in Malaysia

In Malaysia, a business may be conducted:

i. By an individual operating as a sole proprietor, or

ii. By two or more (but not more than 20) persons in partnership, or

iii. By a locally incorporated company or by a foreign company registered under the provisions of the Companies Act 1965.

All sole proprietorships and partnerships must be registered with the Companies Commission of Malaysia (CCM) under the Registration of Businesses Ordinance 1956. In the case of partnerships, partners are both jointly and severally liable for the debts and obligations of the partnership should its assets be insufficient. Formal partnership deeds may be drawn up governing the rights and obligations of each partner but this is not obligatory.

2.1.1 Company Structure

The Companies Act 1965 governs all companies in Malaysia. The Act stipulates that a person must register a company with the CCM in order to engage in any business activity. It provides for three types of companies:

i. A company limited by shares where the personal liability of its members is limited to the par value of their shares, the number of shares taken or agreed to be taken by them.

ii. A company limited by guarantee where the members guarantee to meet liability up to an amount nominated in the Memorandum and Articles of Association in event of the company is being wound up.

iii. An unlimited company where there is no limit to the members' liability.

2.1.2 Company Limited by Shares

The most common company structure in Malaysia is a company limited by shares. Such limited companies may be either private (Sendirian Berhad or Sdn. Bhd.) or public (Berhad or Bhd.) companies.

Private Companies

A company having a share capital may be incorporated as a private company if its Memorandum and Articles of Association:

i. Restricts the right to transfer its shares;

ii. Limits the number of its members to 50, excluding employees and some former employees;

iii. Prohibits any invitation to the public to subscribe for its shares and debentures;

iv. Prohibits any invitation to the public to deposit money with the company.

Public Companies

A public company can be formed or, alternatively, a company can be converted to a public company subject to Section 26 of the Companies Act 1965. Such a company can offer shares to the public provided:

i. It has registered a prospectus with the Securities Commission

ii. It has lodged a copy of the prospectus with the CCM on or before the date its issue.

A public company can apply to have its shares quoted on Bursa Malaysia subject to compliance with the requirements laid down by the exchange. Any subsequent issue of securities (e.g. issue by way of a rights or bonus, or issue arising from an acquisition, etc.) requires the approval of the Securities Commission.

2.2 Procedure for Incorporation

To incorporate a company, a person must apply to the CCM using Form 13A together with a payment of RM30 in order to determine if the proposed name of the intended company is available. If it is, the application will be approved and the proposed name reserved for the applicant for three months.

A person must then lodge the following documents with the CCM within the three months to secure the use of the proposed name:

i. Memorandum and Articles of Association

ii. Declaration of Compliance (Form 6)

iii. Statutory declaration by a person before appointment as a director, or by a promoter before incorporation of a company (Form 48A)

The Memorandum of Association documents the company's name, the objects, the amount of authorised capital (if any) proposed for registration and its division into shares of a fixed amount.

The Articles of Association describes the regulations governing the internal management of the affairs of the company and the conduct of its business.

Once the Certificate of Incorporation is issued, the subscribers to the Memorandum together with such other persons as may from time to time become members of the company shall be a body corporate, capable of exercising the functions of an incorporated company and of suing and being sued. It has a perpetual succession under common seal with power to hold land but with such liability on the part of the members to contribute to the assets of the company in the event of it being wound up, as is provided for in the Companies Act.

2.2.1 Requirements of a Locally Incorporated Company

A company must maintain a registered office in Malaysia where all books and documents required under the provisions of the Act are kept. The name of the company shall appear in legible romanised letters, together with the company number, on its seal and documents.

A company cannot deal with its own shares or hold shares in its holding company. Each equity share of a public company carries only one vote at a poll at any general meeting of the company. A private company may, however, provide for varying voting rights for its shareholders.

The secretary of a company must be a natural person of full age who has his principal or only place of residence in Malaysia. He must be a member of a prescribed body or

is licensed by the Registrar of Companies. The company must also appoint an approved company auditor to be the company auditor in Malaysia.

In addition, the company shall have a least two directors who each has his principal or only place of residence within Malaysia. Directors of public companies or subsidiaries of public companies must not normally be over 70 years of age. It is not incumbent that a company director also be a shareholder.

2.3 Registration for Foreign Companies

A foreign company desiring to conduct business or establish a place for one in Malaysia must register with the CCM. The same registration procedure applies whereby an application must be submitted on Form 13A to the CCM in Kuala Lumpur or any of its branch offices in Malaysia, with a payment of RM30. If the intended name of the foreign company is available, the application will be approved and the name reserved for three months.

Upon approval, applicants must lodge the following documents with the CCM:

i. A certified copy of its Certificate of Incorporation (or a document of similar effect) from the country of origin

ii. A certified copy of its Charter, Statute on Memorandum and Articles of Association or other instrument constituting or defining its constitution

iii. A list of its directors and certain statutory particulars regarding them (Form 79)

iv. Where there are local directors, a memorandum stating the powers of those directors

v. A memorandum of appointment or power of attorney authorising one or more persons resident in Malaysia to accept on behalf of the company, service of process and any notices required to be served on the company

vi. A statutory declaration in the prescribed form made by the agent of the company (From 80)

The appointed agent undertakes all acts required to be done by the company under the Companies Act 1965. Any change in agents must be reported to the CCM.

Every foreign company shall, within a month of establishing a place of business or commencing business within Malaysia, lodge with the CCM for registration, notice of the situation of its registered office in Malaysia using the prescribed form.

A foreign incorporated company must file a copy of the Annual Return within one month of its annual general meeting. Within two months of its annual general meeting, the company must file a copy of the balance sheet of the head office, a duly audited statement of assets used in and liabilities arising out of its operations in Malaysia, and a duly audited profit and loss account.

B Guidelines on Equity Policy

1.0 EQUITY POLICY IN THE MANUFACTURING SECTOR

Malaysia has always welcomed investments in its manufacturing sector. Desirous of increasing local participation in this activity, the government encourages joint-ventures between Malaysian and foreign investors.

1.1 Equity Policy for New, Expansion or Diversification Projects

The level of exports had been used to determine foreign equity participation in manufacturing projects. However, since 31 July 1998, the Malaysian government had relaxed the equity policy guidelines for all applications for investments in new as well as expansion/diversification projects in the manufacturing sector. Under this relaxation, foreign investors could hold 100% equity irrespective level of exports.

However, this relaxation only applies to all applications that were received by 31 December 2003. In addition, it did not apply to specific activities and products where Malaysian companies have the capabilities and expertise. These activities and products are paper packaging, plastic packaging (bottles, films, sheets and bags), plastic injection moulded components, metal stamping and metal fabrication, wire harness, printing and steel service centres. In these cases, specific equity guidelines prevail.

To further enhance Malaysia's investment climate, equity holdings in all manufacturing projects were fully liberalised effective from 17 June 2003. Foreign investors can now hold 100% of the equity in all investments in new projects, as well as investments in expansion/diversification projects by existing companies, irrespective of the level of exports and without any product/activity being excluded.

The new equity policy also applies to:

i. Companies previously exempted from obtaining a manufacturing licence but whose shareholders' funds have now reached RM2.5 million or have engaged 75 or more full-time employees and are thus required to be licensed.

ii. Existing licensed companies previously exempted from complying with equity conditions, but are now required to comply due to their shareholders' funds having reached RM2.5 million.

1.2 Equity Policy Applicable to Existing Companies

Equity and export conditions imposed on companies prior to 17 June 2003 will be maintained.

However, companies can request for these condition to be removed. The government will be flexible in considering such requests and approval will be given based on the merits of each case. Companies with export conditions can apply for approval from MIDA to sell in the domestic market based on the following guidelines:

- Up to 100% of their output for those products with nil duty or not produced locally.
- Up to 80% of their output if the domestic supply is inadequate; or there has been an increase in imports from ASEAN for products with Common Effective Preferential Tariff (CEPT) duties of 5% and below.

2.0 PROTECTION OF FOREIGN INVESTMENT

Malaysia's commitment in creating a safe investment environment has persuaded more than 4,000 international companies from over 50 countries to make Malaysia their offshore base.

2.1 Equity Ownership

A company whose equity participation has been approved will not be required to restructure its equity at any time as long as the company continues to comply with the original approval and retains the original features of the project.

2.2 Investment Guarantee Agreements

Malaysia's readiness to conclude Investment Guarantee Agreements (IGAs) is a testimony of the government's desire to increase foreign investor confidence in Malaysia, IGAs will:

- Protect against nationalisation and expropriation.
- Ensure prompt and adequate compensation in the event of nationalisation or expropriation.
- Provide free transfer of profits, capital and other fees.
- Ensure settlement of investment disputes under the Convention on the Settlement of Investment Disputes of which Malaysia has been a member since 1966.

Malaysia has concluded Investment Guarantee Agreements with the following groupings and countries (in alphabetical order):

Groupings:

- Association of South-East Asian Nations (ASEAN)
- Organisation of Islamic Countries (OIC)

Countries:

Albania
Algeria
Argentina
Austria
Bahrain
Bangladesh
Belgo-Luxembourg
Bosnia Herzegovina
Botswana
Burkina Faso
Cambodia
Canada
Chile
Croatia
Cuba
Czech Republic
Denmark
Djibouti
Egypt
Ethiopia
Finland
France
Germany
Ghana
Guinea
Hungary
India
Indonesia
Iran
Italy
Jordan
Kazakstan
Korea, North
Korea, Sorth
Kuwait
Kyrgyz Republic
Laos
Lebanon
Macedonia
Malawi
Mongolia
Morocco
Netherlands
Norway
Pakistan
Papua New Guinea
Peru
Poland
Romania
Saudi Arabia
Senegal
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Taiwan
Turkey
Turkmenistan
United Arab Emirates
United Kingdom
United States of America
Uruguay
Uzbekistan
Yemen
Zimbabwe

2.3 Convention on the Settlement of Investment Disputes

In the interest of promoting and protecting foreign investment, the Malaysian government ratified the provisions of the Convention on the Settlement of Investment Disputes in 1966. The Convention, established under the auspices of the International Bank for Reconstruction and Development (IBRD), provides for international conciliation or arbitration through the International Centre for Settlement of Investment Disputes located at IBRD's principal office in Washington.

2.4 Kuala Lumpur Regional Centre for Arbitration

The Kuala Lumpur Regional Centre for Arbitration was established in 1978 under the auspices of the Asian-African Legal Consultative Committee (AALCC) - an inter-governmental organisation in cooperation with and assisted by the Malaysian government.

A non-profit organisation, the Centre serves the Asia Pacific region. It aims to provide a system to settle disputes for the benefit of parties engaged in trade and commerce and investments with and within the region.

Any dispute, controversy or claim arising out of or relating to a contract, or the breach, termination or invalidity shall be decided by arbitration in accordance with the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration.

C Incentives for Investment

In Malaysia, tax incentives, both direct and indirect, are provided for in the Promotion of Investments Act 1986, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 1972, Excise Act 1976 and Free Zones Act 1990. These Acts cover investments in the manufacturing, agriculture, tourism (including hotel) and approved services sectors as well as R&D, training and environmental protection activities.

The direct tax incentives grant partial or total relief from income tax payment for a specified period, while indirect tax incentives come in the form of exemptions from import duty, sales tax and excise duty.

1.0 INCENTIVES FOR THE MANUFACTURING SECTOR

1.1 Main Incentives for Manufacturing Companies

The major tax incentives for companies investing in the manufacturing sector are the Pioneer Status or Investment Tax Allowance.

Eligibility for Pioneer Status or Investment Tax Allowance is based on certain priorities, including the levels of value-added, technology used and industrial linkages. Such eligible projects are termed as "promoted activities" or "promoted products" (Please refer to the List of Promoted Activities and Products - General)

1.1.1 Pioneer Status

A company granted Pioneer Status enjoys a 5-year partial exemption from the payment of income tax. It pays tax on 30% of its statutory income*, with the exemption period commencing from its Production Day (defined as the day its production level reaches 30% of its capacity).

To encourage investment in the promoted areas i.e. the States of Sabah and Sarawak and the designated " Eastern Corridor"+ of Peninsula Malaysia, applications received from 13 September 2003 from companies located in these areas will enjoy a 100% tax exemption on the statutory income during their 5-year exemption period. Companies

which have been granted approval for this incentive but have not commenced commercial production, or applications under consideration, are also eligible. All project applications received by 31 December 2005 will be eligible for this enhanced incentive.

Applications for Pioneer Status should be submitted to the Malaysian Industrial Development Authority (MIDA).

1.1.2 Investment Tax Allowance (ITA)

As an alternative to Pioneer Status, a company may apply for Investment Tax Allowance (ITA). A company granted ITA gets an allowance of 60% of qualifying capital expenditure (such as factory, plant, machinery or other equipment used for the approved project) incurred within five years from the date on which the first qualifying capital expenditure is incurred.

The company can offset this allowance against 70% of its statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised. The remaining 30% of statutory income will be taxed at the prevailing company tax rate.

To encourage investment in the promoted areas i.e. the States of Sabah and Sarawak and the designated " Eastern Corridor"+ of Peninsula Malaysia, applications received from 13 September 2003 from companies located in these areas will enjoy an allowance of 100% on the qualifying capital expenditure incurred within a period of five year. The allowance can be utilised to offset against 100% of the statutory income for each 5-year of assessment. Companies which have been granted approval for this incentive one year prior to 13 September 2003 but have not commenced commercial production, or applications under consideration, are also eligible. All project applications received by 31 December 2005 will be eligible for this enhanced incentive.

Applications should be submitted to MIDA.

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* *Statutory Income is derived after deducting revenue expenditure and capital allowances from the gross income.*

\+ *The "Eastern Corridor" of Peninsular Malaysia cover the States of Kelantan, Terengganu and Pahang, and the district of Mersing in the State of Johor.*

1.2 Incentives for Relocating Manufacturing Activities to Promoted Areas

In order to reduce the costs of doing business and to provide a competitive business environment, existing companies which relocate their manufacturing activities to the promoted areas, are eligible for a second round of the following incentives:

(i) Pioneer Status with a tax exemption of 100% of the statutory income for a period of 5 years; or

(ii) Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of five years. The allowance can be utilised to offset against 100% of the statutory income for each year of assessment.

All applications received from 11 September 2004 are eligible for the incentives.

Applications should be submitted to MIDA.

1.3 Incentives for High Technology Companies

A high technology company is a company engaged in promoted activities or in the production of promoted products in areas of new and emerging technologies, (Please refer to the List of Promoted Activities and Products - High Technology Companies). A high technology company qualifies for:

i. Pioneer Status with a tax exemption of 100% of statutory income for a period of five years; or

ii. Investment Tax Allowance of 60% on the qualifying capital expenditure incurred within five years from the date the first capital expenditure was incurred. The allowance can be utilised to offset against 100% of its statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

The high technology company must fulfil the following criteria:

i. The percentage of local R&D expenditure to gross sales should be at least 1% on an annual basis. The company has three years from its date of operation or commencement of business to comply with this requirement.

ii. Scientific and technical staff with degrees/diplomas and a minimum of five years experience in related fields should comprise at least 7% of the company's total workforce.

1.4 Incentives For Strategic Projects

Strategic projects involve products or activities of national importance. They generally involve heavy capital investments with long gestation periods, have high levels of technology and are integrated, generate extensive linkages, and have significant impact on the economy. Such projects qualify for:

i. Pioneer Status with tax exemption of 100% of statutory income for a period of 10 years; or

ii. Investment Tax Allowance of 100% on qualifying capital expenditure incurred within five years from the date the first qualifying capital expenditure is incurred. This allowance can be offset against 100% of its statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

1.5 Incentives for Small and Medium-Scale Companies

Effective from the year of assessment of 2003, small and medium-scale companies with a capital of RM2.5 million and below are eligible for a reduced corporate tax of 20% on chargeable income of up to RM100,000. The tax rate on the remaining chargeable income is maintained at 28%. Dividends distributed will be given a tax credit of 20% in the hands of the shareholders.

Small-scale manufacturing companies incorporated in Malaysia with shareholders' funds not exceeding RM500,000 and having at least 60% Malaysian equity are eligible for the following incentives:

i. Pioneer Status with an income tax exemption of 100% of the statutory income for a period of five years; or

ii. Investment Tax Allowance of 60% on the qualifying capital expenditure incurred within five years. This allowance can be offset against 100% of the statutory income for each year of assessment.

A sole proprietorship or partnership is eligible to apply for this incentive provided a new private limited/limited company is formed to take over the existing production/activities.

To qualify for the incentive, a small-scale company has to comply with any one of the following criteria:

i. The value added must be at least 15%; or

ii. The project contributes towards the socio-economic development of the rural population.

The company shall carry out the manufacturing of products or participate in activities listed as promoted products and activitied for small-scale companies (Please refer to the list of Promoted Activities and Products - Small Scale Companies).

Applications should be submitted to MIDA.

1.6 Incentives to Strengthen Industrial Linkages

To encourage large companies to participate in an Industrial Linkage Programme (ILP), expenditure incurred in the training of employees, product development and testing, and factory auditing to ensure the quality of vendors' products, will be allowed as a deduction in the computation of income tax.

Vendors, including small and medium-scale companies that propose to manufacture promoted products or participate in promoted activities in an ILP (Please refer to the List of Promoted Activities and Products - Industrial Linkage Programme (ILP)) are eligible for the following incentives:

i Pioneer Status with tax exemption of 100% of its statutory income for a period of five years; or

ii Investment Tax Allowance of 60% (100% for promoted areas) on the qualifying capital expenditure incurred within five years from the date the first qualifying capital expenditure is incurred. This allowance can be offset against 100% of its statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

To encourage vendors to manufacturing promoted products or participate in activities for the international market, vendors in an approved ILP who are capable of achieving world-class standards in terms of price, quality and capacity, will be eligible for the following incentives:

i. Pioneer Status with a tax exemption of 100% of the statutory income for a period of 10 years; or

ii. Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of five years which the company can offset against 100% of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

1.7 Incentives for the Machinery and Equipment Industry

1.7.1 Incentives for the Production of Specialised Machinery and Equipment

Companies undertaking activites in the production of specialised machinery and equipment, namely, machine tools, plastic injection machines, plastic extrusion machinery, material handling equipment, packaging machinery, robotics and factory automation equipment, specialised / process machinery or equipment for specific industries, and parts and components of the mentioned machinery and equipment are eligible for:

i. Pioneer Status with a tax exemption of 100% of statutory income for a period of 10 years; or

ii. Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within five years from the date on which the first qualifying capital expenditure is incurred. This allowance can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

1.7.2 Additional Incentives for the Production of Heavy Machinery

Applications received from 13 September 2003 from existing locally-owned companies that reinvest in the production of heavy machinery such as cranes, quarry machinery, batching plant and port material handling equipment, are eligible for the following incentives:

i. Pioneer Status with a tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from the reinvestment for a period of five years; or

ii. Investment Tax Allowance of 60% (100% for promoted areas) on the additional qualifying capital expenditure incurred within a period of five years. The allowance can be offset against 70% (100% for promoted areas) of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

1.7.3 Additional Incentives for the Production of Machinery and Equipment

Applications received from 13 September 2003 from existing locally-owned companies that reinvest in the production of machinery and equipment, including specialised machinery and equipment and machine tools are eligible for the following incentives:

i. Pioneer Status with a tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from the reinvestment for a period of five years; or

ii. Investment Tax Allowance of 60% (100% for promoted areas) on the additional qualifying capital expenditure incurred within a period of five years. The allowance can be offset against 70% (100% for promoted areas) of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

1.8 Incentives for Automotive Component Modules

New and existing companies that undertake design, R&D and production of qualifying automotive component modules or systems are eligible for:

i. Pioneer Status with a tax exemption of 100% of the statutory income for a period of five years; or

ii. Investment Tax Allowance of 60% on the qualifying capital expenditure incurred within five years from the date first capital expenditure in incurred. The allowance can be offset against 100% of the statutory income for each year of assessment.

The qualifying modules or systems are front corner modules, rear corner modules, instrument panel modules, struts and absorber and spring assembly modules, bumper modules, front cross member modules, function integrated door modules, fuel tank modules, seat modules, pedal modules, door trim modules, floor console modules, tyre and wheel modules, brake systems, wiper systems, exhaust systems, audio systems, heater ventilation air-conditioning systems, air bag systems, power and signal distribution systems, alarm systems, seat belt systems, exterior lighting systems, body in white modules, engine management systems, safety systems, telematics, navigational systems, engine fuel injection systems, and vehicle intelligence systems.

This incentive is for applications received by MIDA from 21 September 2002.

1.9 Enhanced Incentives for the Utilisation of Oil Palm Biomass

Applications received from 13 September 2003 from companies that utilise oil palm biomass to produce value-added product such as particleboard, medium density fibreboard, plywood, pulp and paper are eligible for the following incentives:

i. New Companies

a. Pioneer Status with a tax exemption of 100% of the statutory income for a period of 10 years' or

b. Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of five years. The allowance can be used to offset against 100% of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

However, companies which have been granted approval for these incentives one year prior to 13 September 2003 but have not commenced commercial production, or applications under consideration, are also eligible for these incentives.

ii. Existing Companies that Reinvest

a. Pioneer Status with a tax exemption of 100% on the increased statutory income arising from the reinvestment for a period of 10 years; or

b. Investment Tax Allowance of 100% on the additional qualifying capital expenditure incurred within a period of five years. The allowance can be used to offsetagainst 100% of the statutory income for each year of assessment.

1.10 Additional Incentives for the Manufacturing Sector

1.10.1 Reinvestment Allowance (RA).

A manufacturing company that has been in operation for at least 12 months and incurs qualifying capital expenditure to expand, modernise or automate its existing business or diversify its existing business into related products within the same industry can apply for Reinvestment Allowance (RA).

The RA is given at the rate of 60% on the qualifying capital expenditure incurred by the company, and can be offset against 70% of its statutory income for the year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised.

A company can offset the RA against 100% of its statutory income for the year of assessment if:

– The company undertakes reinvestment projects in the promoted areas, i.e the states of Sabah, Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia; or

– The company attains a productivity level exceeding the level determined by the Ministry of Finance. For further details on the prescribed productivity level for each sub-sector, please contact the Inland Revenue Board. (see 6H-Useful Addresess - Relevant Organisations)

The RA will be given for a period of 15 consecutive years beginning from the year the first reinvestment is made. Companies can only claim upon completion of the qualifying project, ie. after the building is completed or when the plant/machinery is put to operational use. Assets acquired for the reinvestment cannot be disposed of within a period of two years from the time of the reinvestment.

Effective from 21 September 2002, a company that intends to reinvest before the expiry of its Pioneer Status can surrender its Pioneer Status for cancellation and be eligible for RA.

Applications for RA should be submitted to the Inland Revenue Board (IRB), while applications for the surrender of pioneer status for RA should be submitted to MIDA.

1.10.2 Accelerated Capital Allowance (ACA)

After the 15-year period of eligibility for Reinvestment Allowance (RA), companies that reinvest in the manufacture of promoted products are eligible to apply for Accelerated Capital Allowance (ACA). The ACA on capital expenditure is to be utilised within three years, i.e. an initial allowance of 40% and an annual allowance of 20%.

Applications should be submitted to the IRB accompanied by a letter from MIDA certifying that the companies are manufacturing promoted products.

1.10.3 Accelerated Capital Allowance on Equipment to Maintain Quality of Power Supply

In order to reduce the cost of doing business caused by interruptions in the power supply, companies which incur capital expenses on equipment to ensure the quality of power supply, are eligible for Accelerated Capital Allowance for a period of 2 years. Only equipment determined by the Ministry of Finance is eligible for the Accelerated Capital Allowance.

This incentives is effective from the year of assessment 2005.

Applications should be submitted to the IRB.

1.10.4 Tax Exemption on the Value of Increased Exports

To promote exports, manufacturing companies in Malaysia qualify for:

– A tax exemption on statutory income equivalent to 10% of the value of increased exports, provided that the goods exported attain at least 30% value added; or

– A tax exemption on statutory income equivalent to 15% of the value of increased exports, provided that the goods exported attain at least 50% value added.

Claims should be submitted to the IRB.

To further encourage the export of Malaysian goods, a locally-owned manufacturing company with Malaysian equity of at least 60% is eligible for:

– A tax exemption on statutory income equivalent to 30% of the value of increased exports, provided the company achieves a significant increase in exports;

– A tax exemption on statutory income equivalent to 50% of the value of increased exports, provided the company succeeds in penetrating new markets;

– A full tax exemption on the value of increased exports, provided the company achieves the highest increase in export in its category.

These incentives are effective from the year of assessment 2003.

2.0 INCENTIVES FOR THE AGRICULTURE SECTOR

The Promotion of Investments Act 1986 states that the term "company" in relation to agriculture includes:

- Agro-based cooperative societies and associations
- Sole proprietorships and partnerships engaged in agriculture.

Companies producing promoted products or engaged in promoted activities (Please refer to the List of Promoted Activities and Products - General) in the agricultural sector qualify for the following incentives.

2.1 Main Incentives for the Agricultural Sector

2.1.1 Pioneer Status

As in the manufacturing sector, companies producing promoted products or engaged in promoted activities are eligible for Pioneer Status.

A Pioneer Status company enjoys partial exemption from the payment of income tax. It pays tax on 30% of its statutory income for five years, commencing from its Production Day (defined as the day of first sale of the agricuture produce).

Applications received from 13 September 2003 from companies located in the promoted areas i.e. the states of Sabah and Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia, will enjoy a 100% tax exemption

on their statutory income during their 5-year exemption period. Companies which have been granted approval for this incentive but have not commenced commercial production, or applications under consideration, are also eligible. All project applications received by 31 December 2005 will be eligible for this enhanced incentive.

Applications should be submitted to MIDA

2.1.2 Investment Tax Allowance (ITA)

As an alternative to Pioneer Status, companies producing promoted products or engaged in promoted activities can apply for ITA. A company granted ITA gets an allowance of 60% of qualifying capital expenditure incurred within five years from the date on which the first qualifying capital expenditure is incurred.

Companies can offset this allowance against 70% of their statutory income in the year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised. The remaining 30% of statutory income will be taxed at the prevailing company tax rate.

Applications received from 13 September 2003 from companies located in the promoted areas i.e. the states of Sabah and Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia, will enjoy an allowance of 100% on the qualifying capital expenditure incurred within a period five years. The allowance can be utilised to offset against 100% of the statutory income for each year of assessment. Companies which have been granted approval for this incentive but have not commenced commercial production, or applications under consideration, are also eligible. All project applications received by 31 December 2005 will be eligible for this enhanced incentive.

To increase the benefits to agricultural projects, the government has broadened the definition of qualifying capital expenditure to include expenditure incurred on:

– Clearing and preparation of land

– Planting crops

– Provision of plant and machinery used in Malaysia for the purpose of crop cultivation, animal farming, aquaculture, inland fishing or deep-sea fishing and other agricultural or pastoral pursuits

– Construction of access roads including bridges, constructing or purchase of buildings (including those provided for the welfare of people or as living accommodation) and structural improvements on land or other structures which are used for crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits.

Such roads, bridges, buildings structural improvements on land and other structures should be on land forming part of the land used for the purpose of such crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits.

In view of the time lag between start-up and processing of the produce, integrated agricultural projects qualify for ITA for an additional five years for expenditure incurred for processing or manufacturing operations.

Applications should be submitted to MIDA.

2.1.3 Incentives for Food Production

(a) Incentives for New Projects

To encourage food production, a company which invests in a subsidiary company engaged in food production, together with the subsidiary company qualify for either one of the following incentive packages:

Incentive Package A:

i. A company which takes up a 70% equity in another subsidiary company engaged in food production receives tax deduction equivalent to the amount of investment made in that subsidiary; and

ii. The subsidiary company enjoys full income tax exemption on its statutory income for 10 years commencing from the first year the company enjoys profits, in which:

- losses incurred before and during the exemption period can be brought forward after the exemption period of 10 years;
- dividends paid from the exempt income is exempted in the hands of the shareholders.

Incentive Package B:

i. A company which takes up 70% equity in a subsidiary company engaged in food production will be given group relief for the losses incurred by the subsidiary company before it records any profit, and

ii. The subsidiary company enjoys full income tax exemption on its statutory income for 10 years. This commences from the first year the company enjoys profits, in which:

- losses incurred during the exemption period can be carried forward after the exemption period of 10 years; and
- dividends paid from the exempt income is exempted in the hands of the shareholders.

The eligible food products are as approved by Minister of Finance. These include kenaf, deep-sea fishing, vegetables, fruits, herbs, spices, aquaculture and the rearing of cattle, goats and sheep.

The above equity condition for companies which invest in its subsidiaries is effective from 11 September 2004. Companies should commence food production within a period of one year from the date the incentive is approved. The incentive period for this scheme will be extended for applications received until 31 December 2010.

Applications should be submitted to the Ministry of Agriculture and Agro-based Industry.

(b) Incentives for Existing Companies which Reinvest

An existing company which that reinvests in the production of the above food products also qualifies for the same incentives for a period of five years.

The food production project for both new and existing companies should commence within a year from the date the incentive is approved. Applications should be submitted to the Ministry of Agriculture and Agro-based Industry by 31 December 2005.

(c) Tax Incentives for 'Halal' Food Production

To encourage new investments in 'halal' food production for the export market and to increase the use of modern and state of the art machinery and equipment in producing high quality 'halal' food that comply with the international standards, companies which invest in 'halal' food productions and have already obtained 'halal' certification from JAKIM and other quality certification are eligible for the Investment Tax Allowance of 100% of qualifying capital expenditure incurred within a period of 5 years.

This allowance can be utilised to offset against 100% of the statutory income in the year of assessment. Applications received from 11 September 2004 are eligible for this incentive.

Applications should be submitted to MIDA.

2.1.4 Incentives for Reinvestment in Food Processing Activities

A locally-owned manufaturing company with Malaysian equity of at least 60% that reinvests in promoted food processing activities is eligible for another round of Pioneer Status or Investment Tax Allowance (ITA) incentive. Activities located in the promoted areas, i.e. the States of Sabah, Sarawak and the "Eastern Corridor" of Peninsular Malaysia, are eligible for the Pioneer Status and ITA incentives in accordance with that given to promoted areas.

This incentive is for applications received by MIDA from 21 September 2002.

2.2 Additional Incentives for the Agricultural Sector

2.2.1 Reinvestment Allowance

Persons or companies engaged for at least 12 months in the production of essential food such as rice, maize, vegetables, tubers, livestock, aquatic products, and any other activities approved by the Minister of Finance enjoy the Reinvestment Allowance (RA).

The qualifying capital expenditure includes expenditure incurred on:

- Clearing and preparation of land
- Planting of crops

- Provision of plant and machinery used in Malaysia for the purpose of crop cultivation, animal farming, aquaculture, inland fishing or deep-sea fishing, and other agricultural or pastoral pursuits

- Construction of access roads including bridges, construction or purchase of buildings (including those provided for the welfare of person or as living accommodation), and structural improvements on land or other structures which are used for crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits. Such roads, bridges, buildings, structural improvements on land and other structures should be on land forming part of the land used for the purpose of such crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits

The RA is in the form of an allowance of 60% of the qualifying capital expenditure incurred within a period of 15 years beginning from the year the first reinvestment is made. The allowance can be offset against 70% of the statutory income in the year of assessment. Untilised allowances can be carried forward to the following years until fully untilised.

Companies that undertake reinvestment projects in the promoted areas i.e. the states of Sabah, Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia can offset the allowance fully against their statutory income for that year of assessment.

Claims should be submitted to the IRB.

2.2.2 Reinvestment Incentives for Resource-Based Industries

This incentive is offered to companies that are at least 51% Malaysian-owned and are in the rubber, oil palm and wood-based industries producing products which have export potential. Companies in these industries reinvesting for expansion purposes are eligible for another round of Pioneer Status or Investment Tax Allowance (ITA). Activities located in the promoted areas i.e. the States of Sabah, Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia are eligible for higher levels of exemption / allowance under Pioneer Status or ITA in accordance with that given for promoted areas.

Applications should be submitted to MIDA

2.2.3 Incentives for Modernising Chicken and Duck Rearing

To promote modernisation and the usage of environment-friendly practices in the agricultural sector, chicken and duck rearers who reinvest for the purpose of shifting from the opened house system to the closed house system will be eligible for Reinvestment Allowance for a period of 15 consecutive years commencing from the first year the reinvestment is made.

This incentive is given on condition the minimum rearing capacity of the closed house system is as follows:

- 20,000 broiler chickens/broiler ducks per cycle; or
- 50,000 layer chickens/layer ducks per cycle.
- 20,000 parent or grandparent stock of chicken/ ducks per cycle

The incentive for broiler chickens/broiler ducks and layer chickens/layer ducks is effective from the year of assessment 2003 while the incentive for parent/ grandparent stock of chicken/ducks is effective from the year of assessment 2005.

All projects must be approved by the Ministry of Agriculture and Agro-based Industry.

Claims should be submitted to the IRB.

2.2.4 Accelerated Capital Allowance (ACA)

Upon the expiry of Reinvestment Allowance (RA) companies that reinvest in promoted agricultural activities and food products are eligible to apply for Accelerated Capital Allowance (ACA). These activities include cultivation of rice, maize, vegetables, tubers, livestock, aquatic products and any other activities approved by the Minister of Finance.

The ACA on the capital expenditure is to be utilised within two years, i.e., an initial allowance of 20% in the first year and an annual allowance of 40%.

Claims should be submitted to the IRB, accompanied by a letter from MIDA certifying that the companies are undertaking promoted agricultural activities or producing promoted food products.

2.2.5 Agricultural Allowance

A person or a company carrying on an agricultural activity can claim capital allowances and special industrial building allowances under the Income Tax Act 1967 for certain capital expenditure. Capital expenditure which qualifies includes expenditure incurred on:.

- Clearing and preparation of land
- Planting of crops
- Providing of plant and machinery used in Malaysia for the purpose of crop cultivation, animal farming, aquaculture, inland fishing or deep-sea fishing, and other agricultural or pastoral pursuits
- Construction of access roads including bridges, construction or purchase of buildings (including those provided for the welfare of person or as living accommodation), and structural improvements on land or other structures which are used for crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits. Such roads, bridges, buildings, structural improvements on land and other structures should be on land forming part of the land used for the purpose of such crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits

A company continues to get this allowance as long as the company incurs this expenditure, regardless of whether it already enjoys Pioneer Status or ITA.

Claims should be submitted to the IRB.

2.2.6 Accelerated Agriculture Allowance for the Planting of Rubberwood Trees

To ensure a regular supply of rubberwood for the furniture industry, a non-rubber plantation company that plants at least 10% of its plantation with rubberwood trees is eligible for the Accelerated Agriculture Allowance whereby the write-off period on the capital expenditure incurred for land preparation, planting and maintenance of rubberwood cultivation is accelerated from two years to one year.

This incentive is for project applications received by the Ministry of Plantation Industries and Commodities from 21 September 2002.

Applications should be submitted to the Ministry of Plantation Industries and Commodities.

2.2.7 100% Allowance on Capital Expenditure for Approved Agricultural Projects

Schedule 4A of the Income Tax Act 1967 provides a 100% allowance on capital expenditure for Approved Agricultural Projects as approved by the Minister of Finance. This covers qualifying capital expenditure incurred within a specific time frame for a farm that cultivates and utilises a specified minimum acreage as stipulated by the Minister of Finance.

Approved agricultural projects are cultivation of vegetables, fruits (papaya, banana, passion fruit, star fruit, guava and mangosteen), tubers, roots, herbs, spices, crops for animal feed and hydroponic-based products, ornamental fish culture; fish and prawn rearing (pond culture, tank culture, marine cage culture, off-shore marine cage culture); cockles, oysters, mussels and seaweed culture; and shrimp, prawn and fish hatchery; and certain species of forest plantations.

The incentive enables a person carrying on such a project to elect to deduct the qualifying capital expenditure incurred in respect of that project from his aggregate income, including income from other sources. Where there is insufficient aggregate income, the unabsorbed expenditure can be carried forward to subsequent years of assessment. Where he so elects, he will not be entitled to any capital allowance or agricultural allowance on the same capital expenditure.

The qualifying capital expenditure eligible for deduction includes expenditure incurred on:

- Clearing and preparation of land
- Planting of crops
- Providing of plant and machinery used in Malaysia for the purpose of crop cultivation, animal farming, aquaculture, inland fishing or deep-sea fishing, and others agricultural or pastoral pursuits

- Construction of access roads including bridges, construction or purchase of buildings (including those provided for the welfare of person or as living accommodation), and structural improvements on land or other structures which are used for crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits. Such roads, bridges, buildings, structural improvements on land and other structures should be on land forming part of the land used for the purpose of such crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits

This incentive is not available to companies which have been granted incentives under the Promotion of Investments Act 1986 and whose tax relief period have not started or have not expired.

Claims should be submitted to the IRB.

2.2.8 Tax Exemption on the Value of Increased Exports

A company which exports fresh and dried fruits, fresh and dried flowers, ornamental plants and ornamental fish enjoys a tax exemption of its statutory income equivalent to 10% of the value of its increased exports.

Claims should be submitted to the IRB.

2.2.9 Incentives for Companies providing Cold Chain Facilities and Services for Food Products

Companies providing cold room and refrigerated truck facilities, and related services such as collection and treatment of locally produced perishable food products qualify for Pioneer Status or Investment Tax Allowance. Activities located in the promoted areas are offered more attractive levels of Pioneer Status or ITA.

Applications received from 13 September 2003 from existing locally owned companies to reinvest in cold chain facilities and service for perishable agricultural produce are eligible for the following incentives:

i. Pioneer Status with a tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from the reinvestment for a period of five years; or

ii. Investment Tax Allowance of 60% (100% for promoted areas) on the additional qualifying capital expenditure incurred within a period of five years. The allowance can be offset against 70% (100% for promoted areas) of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

2.2.10 Double Deduction for Expenses to obtain "Halal" Certification and Quality Systems and Standards Certification

To enhance the competitiveness of Malaysian companies in the global market for "halal" products (products suitable for consumption by Muslims) including "halal" food, double deduction will be given for the purpose of income tax computation to companies which incur expenses in obtaining:

a. quality system and standards certification as well as 'halal' certification from the Department of Islamic Development Malaysia (JAKIM)

b. international quality systems and standards certification

This incentives is effective from the year of assessment 2005.

Claims should be submitted to IRB.

2.2.11 Double Deduction on Freight Charges for Export of Rattan and Wood-based Products

Manufacturers who export rattan and wood-based products (excluding sawn timber and veneer) qualify for double deduction on freight charges.

3.0 INCENTIVES FOR TOURISM INDUSTRY

Tourism projects, including eco-tourism and agro-tourism enjoy tax incentives. These include hotel businesses, construction of holiday camps, recreational projects including summer camps, and construction of convention centres with a capacity to accommodate at least 3,000 participants.

Hotel businesses refer to the following:

- Construction of medium and low-cost hotels (up to a three star category hotel as certified by the Ministry of Culture, Arts and Tourism); and
- Expansion/modernisation of existing hotels.

3.1 Main Incentives for the Tourism Industry

3.1.1 Pioneer Status

A company granted Pioneer Status enjoys a 5-year partial exemption from the payment of income tax. It will only have to pay tax on 30% of its statutory income, commencing from its Production Day which is determined by the Minister of International Trade and Industry.

As an added incentive, applications received from 13 September 2003 from companies located in the promoted areas i.e. States of Sabah, Sarawak, the Federal Territory of Labuan and the designated "Eastern Corridor" of Peninsular Malaysia will enjoy a 100% tax exemption of their statutory income during the 5-year exemption period. Companies which have been granted approval for this incentive but have not commenced commercial production, or applications under consideration, are also eligible. This enhanced incentive applies to all applications received by 31 December 2005.

Applications should be submitted to MIDA.

3.1.2 Investment Tax Allowance

As an alternative to Pioneer Status, a company may apply for Investment Tax Allowance (ITA). A company granted ITA gets an allowance of 60% of qualifying capital expenditure incurred within five years from the date on which the first qualifying capital expenditure was incurred.

Companies can offset this allowance against 70% of the statutory income in the year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been used up. The remaining 30% of the statutory income will be taxed at the prevailing company tax rate.

Applications received from 13 September 2003 from companies located in the promoted areas i.e. the states of Sabah and Sarawak, the Federal Territory of Labuan and the designated "Eastern Corridor" of Peninsular Malaysia, will enjoy an allowance 100% on the qualifying capital expenditure incurred within a period of five years.The allowance can be utilised to offset against 100% of the statutory income for each year of assessment. Companies which have been granted approval for this incentive but have not commenced commercial production, or applications under consideration, are also eligible. All project applications received by 31 December 2005 will be eligible for this enhanced incentive.

Applications should be submitted to MIDA

3.1.3 Additional Incentives For Hotels And Tourism Projects

Applications received by MIDA from 13 September 2003 from companies to reinvest in the expansion, modernisation and renovation of hotels and tourism projects will be given another round of Pioneer Status or Investment Tax Allowance. However, hotels and tourism projects located in the promoted areas will enjoy the following enhanced incentives:

a. Pioneer Status, with a 100% income tax exemption; or

b. Investment Tax Allowance of 100%. The allowance can be offset against 100% of the statutory income in each year of assessment.

3.1.4 Incentives for the Luxury Yacht Industry

The luxury yacht industry is promoted as part of tourism products and are eligible for the following incentives:

- Companies that construct luxury yachts are eligible for Pioneer Status incentive.

  Applications should be submitted to MIDA.

- Companies that carry out repair and maintenance activities for luxury yachts in the islands of Langkawi, Malaysia are eligible for income tax exemption of 100% for five years.

  Applications should be submitted to the Ministry of Finance.

- Companies that provide chartering services of luxury yacht in the country are eligible for income tax exemption of 100% for a period of five years.

  Claims should be submitted to the IRB.

3.2 Additional Incentives for the Tourism Industry

3.2.1 Double Deduction on Overseas Promotion

Hotel and tour operators qualify for double deduction on expenditure incurred for promotional activities overseas. The qualifying expenditure are:

- Expenditure on publicity and advertisements in any mass media outside Malaysia
- Expenditure on the publication of brochures, magazines and guide books, including delivery costs that are not charged to the overseas customers
- Expenditure on market research into new markets overseas, subject to the prior approval of the Minister of Culture, Arts and Tourism
- Expenditure that includes fares to any country outside Malaysia to negotiate or secure a contract for advertising or participate in trade fairs, conferences or forums approved by the Minister of Culture, Arts and Tourism. Such expenses are subject to a maximum of RM300 per day for lodging and RM150 per day for food for the duration of the stay overseas
- Expenditure in organising trade fairs, conferences of forums approved by the Minister of Culture, Arts and Tourism; and
- Expenditure on the maintenance of sales offices overseas for purposes of promoting tourism to Malaysia.

Claims should be submitted to the IRB.

3.2.2 Double Deduction on Approved Trade Fairs

Companies also enjoy double deduction for expenditure incurred to participate in an approved international trade fair in Malaysia.

Claims should be submitted to the IRB.

3.2.3 Tax Exemption for Tour Operators

i. Foreign Tourists

Tour operators who bring in at least 500 foreign tourists a year through groups, inclusive of tours that enter and exit the country by air, sea or land transportation, will be exempted from tax in respect of income derived from the business of operating such tours. This incentive applies to tour operators licensed by the Ministry of Culture, Arts and Tourism.

ii. Local Tourists

Companies that organise domestic tour packages for at least 1,200 local tourists per year get a tax exemption on the income earned. A domestic tour means any tour package within Malaysia participated by local tourists (excluding inbound tourists) by air, land or sea transportation involving at least one night's accommodation.

These incentives apply until the year of Assessment 2006.

Claims should be submitted to the IRB.

3.2.4 Tax Exemption for Promoting International Conferences and Trade Exhibitions

- Local companies which promote international conferences in Malaysia qualify for tax exemption on income earned from bringing at least 500 foreign participants into the country
- Income earned from the organising international trade exhibitions in Malaysia qualifies for tax exemption as long as the exhibitions are approved by MATRADE and the organisers brings in at least 500 foreign visitors per year.

Claims should be submitted to the IRB.

3.2.5 Deduction on Cultural Performance

Expenditure incurred by companies on establishing and managing a musical or cultural group and sponsoring local and/or foreign cultural performances as approved by the Ministry of Culture, Arts and Tourism, qualify for a single deduction.

Claims should be submitted to the IRB.

3.2.6 Incentive for Car Rental Operators

Operators of car rental services for tourists are eligible for excise duty exemption on the purchase of national cars.

Applications should be submitted to the Ministry of Finance.

4.0 INCENTIVES FOR THE ENVIRONMENTAL MANAGEMENT

4.1 Incentives for Forest Plantation Projects

Companies which undertake forest plantation projects are eligible for the following incentives:

- Pioneer Status with a tax exemption of 100% of the statutory income for 10 years: or
- Investment Tax Allowance of 100% on qualifying capital expenditure incurred within five years, which can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been utilised.

Applications should be submitted to MIDA.

4.2 Incentives for the Storage, Treatment and Disposal of Toxic and Hazardous Wastes

Incentives are offered to encourage the setting up of proper facilities to store, treat and dispose toxic and hazardous wastes. Companies that are directly involved in these three activities in an integrated manner qualify for:

- Pioneer Status with a tax exemption of 70% of statutory income for five years; or
- ITA of 60% on qualifying capital expenditure incurred within five years, which can be offset against 70% of the statutory income in the year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been used up.

Activities located in the States of Sabah, Sarawak and the "Eastern Corridor" of Peninsular Malaysia are eligible for higher exemptions / allowances under Pioneer Status or Investment Tax Allowance in accordance with that given for promoted areas.

Applications should be submitted to MIDA.

4.3 Incentives for Energy Conservation

In order to reduce operation costs and at the same time promote environmental preservation, companies providing energy conservation services qualify for Pioneer Status or Investment Tax Allowance. Activities located in the promoted areas i.e. the states of Sabah and Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia are eligible for higher exemptions/allowances under Pioneer Status or ITA in accordance with that given for promoted areas. The companies must implement their projects within one year of approval.

The incentives apply to applications received by 31 December 2005.

Applications should be submitted to MIDA.

4.4 Incentives for Waste Recycling Activities

Companies undertaking waste recycling activities that are of high value-added use high technology are eligible for Pioneer Status or ITA. These activities include recycling of agricultural wastes or agricultural by-products, re-cycling of chemicals and the production of reconstituted wood-based panel boards or products. Activities located in the States of Sabah and Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia are eligible for higher exemptions/ allowances under Pioneer Status or ITA in accordance with that given for promoted areas.

Applications should be submitted to MIDA.

4.5 Incentive for the Use of Renewable Energy Resources

To encourage the generation of energy using biomass that is renewable and environmentally friendly, companies that undertake such activities are eligible for Pioneer Status or ITA. Activities located in the promoted areas are eligible for higher exemptions/ allowances under Pioneer Status or ITA such as follows:

(i) Pioneer Status with 70% tax exemption on statutory income for 5 years; or

(ii) Investment Tax Allowance of 60% of qualifying capital expenditure incurred within a period of 5 years. This allowance can be offset against 70% of the statutory income in each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Activities located in the promoted areas are eligible for higher exemptions/allowances under Pioneer Status or ITA. These incentives are for applications received by 31 December 2005. Companies must implement their projects within one year from the date of approval.

For the purpose of this incentive, 'biomass sources' refers to palm oil mill/estate waste, rice mill waste, sugar cane mill waste, timber/sawmill waste, paper recycling mill waste, municipal waste and biogas (from landfill, palm oil mill effluent (POME), animal waste and others), while energy forms refer to electricity, steam, chilled water, and heat.

Applications should be submitted to MIDA.

4.6 Additional Incentives for Environmental Management

4.6.1 Accelerated Capital Allowance

This incentive provides for a special allowance at an initial rate of 40% and an annual rate of 20% (to be written off within a period of 3 years) for all capital expenditure on related machinery and equipment incurred by:

- Companies that are waste generators and wish to establish facilities to store, treat and dispose of their wastes, either on-site or off-site; and
- Companies undertaking waste recycling activities.

Applications should be submitted to IRB

In the case of companies which incur capital expenditure for conserving their own energy consumption, the write - off period is accelerated to one year effective from the year of assessment 2003. Applications should be the submitted to the IRB with a letter from the Ministry of Energy, Communications and Multimedia certifying that the related equipment is used exclusively for the purpose of energy conservation.

4.6.2 Accelerated Capital Allowance for Equipment Used for the Generation of Renewable Energy for Own Consumption

To further promote the use of renewable energy, equipment used by companies to generate energy from renewable resources for its own consumption will be granted Accelerated Capital Allowance to be fully claimed in one year period effective from the year of assessment of 2005.

The equipment eligible for Accelerated Capital Allowance shall be determined by the Ministry of Finance.

Applications should be submitted to IRB.

5.0 INCENTIVES FOR RESEARCH AND DEVELOPMENT

The Promotion of Investments Act 1986 defines research and development (R&D) as "any systematic or intensive study carried out in the field of science or technology with the object of using the results of the study for the production or improvement of materials, devices, products, produce or processes but does not include:

- quality control of products or routine testing of materials, devices, products or produce
- research in the social sciences or humanities
- routine data collection
- efficiency survey or management studies
- market research or sales promotion."

To further strengthen Malaysia's foundation for a more integrated R&D, companies which carry out designing or prototyping as independent activities are eligible for incentives.

5.1 Main Incentives for Research and Development

5.1.1 Contract R&D Company

A contract R&D company, i.e., a company that provides R&D services in Malaysia to a company other than its related company, is eligible for:

- Pioneer Status with a tax exemption of 100% of the statutory income for five years; or
- Investment Tax Allowance (ITA) of 100% on qualifying capital expenditure incurred within 10 years, which can be offset against 70% of the statutory income in the year of assessment.

Applications should be submitted to MIDA.

5.1.2 R&D Company

An R&D company, i.e., a company that provides R&D services in Malaysia to its related company or to any other company, is eligible for an ITA of 100% on the qualifying capital expenditure incurred within 10 years. The allowance can be offset against 70% of the statutory income in the year of assessment. Should the R&D company opt not to avail itself of the allowance, its related companies can enjoy double deduction for payments made to the R&D company for services rendered.

Applications should be submitted to MIDA.

Eligibility

Contract R&D and R&D companies can apply for the various incentives as long as they fulfill the following criteria:

- Research undertaken should be in accordance with the needs of the country and bring benefit to the economy
- At least 70% of the income of the company should be derived from R&D activities
- For manufacturing-based R&D, at least 50% of the workforce of the company must be appropriately qualified personnel performing research and technical functions; and
- For agriculture-based R&D, at least 5% of the workforce of the company must be appropriately qualified personnel performing research and technical functions.

5.1.3 In-house Research

A company which undertakes research and development in-house to further its business can apply for 50% ITA on the qualifying capital expenditure incurred within 10 years. The company can offset the ITA against 70% of the statutory income in the year of assessment.

Applications should be submitted to MIDA.

5.1.4 Second Round Incentives

Effective from 21 May 2003, R&D companies/activities mentioned in categories 5.1.1 - 5.1.3 will be eligible for a second round of Pioneer Status for another five years, or ITA for a further 10 years, where applicable.

Applications should be submitted to MIDA.

5.1.5 Incentives for Commercialisation of Public Sector R&D

To encourage commercialisation of resource-based R&D findings by the public research institutes, the following incentives are given:

(a) A company that invests in its subsidiary company engaged in the commercialisation of the R&D findings will be given tax deduction equivalent to the amount investment made in the subsidiary company; and

(b) The subsidiary company that undertakes the commercialisation of the R&D findings will be given Pioneer Status with 100% tax exemption on statutory income for 10 years.

The incentive is provided on the following conditions:

(a) At least 70% of the investing company (holding company) and the company undertaking the commercialisation projects is owned by Malaysians;

(b) Company which invests should own at least 70% of the equity of the company that commercialises the R&D findings

(c) The commercialisation of the R&D findings should be implemented within one year from the date of approval of the incentive.

Applications received from 11 September 2004 are eligible for this incentive.

Applications should be submitted to MIDA.

5.2 Additional Incentives for Research and Development

5.2.1 Double Deduction for Research & Development

A company can enjoy double deduction on revenue (non-capital) expenditure for research which is directly undertaken and approved by the Minister of Finance.

Double deduction can also claimed for cash contributions or donations to approved research institutes, and payments for the use of the services of approved research institutes, approved research companies, R&D companies or contract R&D companies.

Effective from 21 May 2003, approved R&D expenditure incurred during the Pioneer Status period will be allowed to be accumulated and brought forward and be given another deduction after the Pioneer Status period.

Expenditure on R&D activities undertaken overseas, including the training of Malaysian staff, will be considered for double deduction on a case-by-case basis.

Claims should be submitted to the IRB.

5.2.2 Incentives for Researchers to Commercialise Research Findings

Effective from the year of assessment 2004,researchers who undertake research focused on value creation will be given a 50% tax exemption for five years on the income that they receive from the commercialisation of their research findings. The undertaking has to be verified by the Ministry of Science , Technology and Environment.

Claims should be submitted to the IRB.

6.0 INCENTIVES FOR TRAINING

To encourage human resource development, the following incentives are available:

6.1 Main Incentives for Training

6.1.1 Investment Tax Allowance

Companies that establish technical or vocational training institutions are eligible for an Investment Tax Allowance of 100% for 10 years. This allowance can be offset against 70% statutory income for each year of assessment.

Existing companies providing technical or vocational training that undertake new investment to upgrade their training equipment or expand their training capacities also qualify for this incentive.

Applications should be submitted to MIDA.

6.2 Additional Incentives for Training

6.2.1 Special Industrial Building Allowance

Companies that incur expenditure on buildings used for approved industrial, technical or vocational training can claim a special annual Industrial Building Allowance (IBA) of 10% for 10 years.

Claims should be submitted to the IRB.

6.2.2 Tax Exemption on Educational Equipment

Besides approved training institutes and in-house training projects, all private institutions of higher learning are eligible for import duty, sales tax and excise duty exemptions on all educational equipment including laboratory equipment for workshops, studios and language laboratories.

Applications should be submitted to MIDA.

6.2.3 Tax Exemption on Royalty Payments

Royalty payments made by educational institutions to non-residents (franchisors) for franchised education scheme programmes that are approved by the Ministry of Education are eligible for tax exemption.

Claims should be submitted to the IRB.

7.0 INCENTIVES FOR INFORMATION AND COMMUNICATION TECHNOLOGY (ICT)

7.1 Main Incentives for Information and Technology (ICT)

7.1.1 Incentive for Software Development

In line with the government's objective to encourage the development of computer software, companies that develop both original and/or undertake major modifications of existing software other than those deemed established are eligible for Pioneer Status with tax exemption of 70% of the statutory income for five years. This incentive is given based on the following guidelines:

- The computer software must be for a general purpose and not for a specific customer
- For companies undertaking modifications of existing software packages, the cost of acquiring the existing packages must not exceed 25% of the modification expenditure, which includes software tools, labour and equipment costs.

Applications should be submitted to MIDA.

7.2 Additional Incentives for the Use of ICT

7.2.1 Accelerated Capital Allowance

Companies receive an initial allowance of 20% and an annual allowance of 40% for expenditure incurred in acquiring computers and information technology assets including software. Thus, the expenditure can be written off within two years.

The cost of developing websites is allowed as an annual deduction of 20% for a period of five years.

7.2.2 Other ICT Incentives

Companies enjoy a single deduction on:

- Operating expenditure including payments to consultants related to IT usage for improving management and production processes.
- Contributions in cash or kind for ICT acculturation projects at local community levels. This is effective until year of assessment 2003.
- Computers given by employers to their employees until year of assessment 2003 are not deemed as income.

Claims should be submitted to the IRB.

7.2.3 Tax Exemption on the Value of Increased Exports

Companies in the ICT sector can apply for a tax exemption on their statutory income equivalent to 50% of the value of increased exports.

Claims should be submitted to the IRB.

8.0 INCENTIVES FOR APPROVED SERVICE PROJECTS (ASPS)

Approved Service Projects (ASPs) or projects in the transportation, communications and utilities sub-sectors approved by the Minister of Finance qualifying for the following tax incentives:

8.1 Main Incentives for ASPs

8.1.1 Exemption Under Section 127 of the Income Tax Act 1967

Generally, under Section 127 of the Income Tax Act 1967, companies undertaking ASPs can apply for tax exemption of 70% of their statutory income for five years. However, companies undertaking ASPs in Sabah, Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia are eligible for tax exemption of 85% of their statutory income for five years, while companies undertaking ASPs of national and strategic importance are eligible for 100% tax exemption of their statutory income for 10 years.

Applications should be submitted to the Ministry of Finance.

8.1.2 Investment Allowance (IA) Under Schedule 7B of the Income Tax Act 1967

The Investment Allowance (1A) under Schedule 7B of the Income Tax Act 1967 is an alternative to the incentive offered under Section 127. Generally, under 1A, companies undertaking ASPs are eligible for an allowance amounting to 60% on the qualifying capital expenditure incurred within five years from the date the first capital expenditure is incurred. The allowance can be offset against 70% of the statutory income and any unutilised allowance can be carried forward to subsequent years until fully utilised.

However, companies undertaking ASPs in Sabah Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia, are eligible for an allowance of 80% on the qualifying expenditure which can be offset against 85% of the statutory income.

Companies undertaking ASPs of national and strategic importance will be granted an allowance of 100% on the qualifying capital expenditure incurred within five years. This allowance can be offset against 100% of the statutory income.

Applications should be submitted to the Ministry of Finance.

8.2 Additional Incentives for ASPs

8.2.1 Exemption from Import Duty and Sales Tax and Excise Duty on Raw Materials, Components, Machinery, Equipment, Spares and Consumables.

Imports of raw materials and components not available locally and used directly to implement ASPs are eligible for exemption from import duty and sales tax, while locally purchased machinery or equipment are eligible for exemption from sales tax and excise duty.

Companies providing services in the transportation and telecommunications sectors, power plants and port operators can apply for import duty and sales tax exemption on spares and consumables that are not produced locally.

The above applications should be submitted to the Ministry of Finance.

9.0 INCENTIVES FOR THE SHIPPING AND TRANSPORTATION INDUSTRY

9.1 Tax Exemption for Shipping Operation

The income of a shipping company derived from the operation of Malaysian ships is exempted from tax. This incentive only applies to residents. A "Malaysian Ship" is a sea-going ship registered as such under the Merchant Shipping Ordinance 1952 (Amended), other than a ferry, barge, tugboat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessels.

The income of any person derived from exercising an employment on board a "Malaysian Ship" is exempted from tax. Income received by non-residents from the rental of ISO containers to Malaysian shipping companies is also exempted from income tax.

Claims should be submitted to the IRB.

9.2 Exemption from Import Duty and Sales Tax on Prime Movers and Trailers

Container hauliers qualify for import duty and sales tax exemptions on prime movers and trailers that are not produced locally, while sales tax exemption can be considered for prime movers and trailers that are produced locally.

Applications should be submitted to the Ministry of Finance.

10.0 INCENTIVES FOR THE MULTIMEDIA SUPER CORRIDOR (MSC)

The Multimedia Super Corridor (MSC), a 15-by-50 kilometre (9-by-30 mile) zone extending south from Malaysia's capital city and business hub, Kuala Lumpur, is a perfect environment for companies wanting to create, distribute and employ multimedia products and services.

MSC Status is the recognition by the Government of Malaysia through the Multimedia Development Corporation (MDC) to companies that participate and undertake ICT activities in the MSC. Companies with MSC Status are entitled to enjoy a set of incentives and benefits that is backed by the Government of Malaysia's Bill of Guarantees.

10.1 Incentives

The incentives enjoyed by MSC status companies are:

- Pioneer Status with tax exemption of 100% of the statutory income for a period of five years for the first round or an Investment Tax Allowance of 100%
- Eligibility for R&D grants (for majority Malaysian-owned MSC Status companies)

Applications for MSC Status should be submitted to the MDC.

10.2 Other Benefits

- Duty-free import of multimedia equipment
- Intellectual property protection and a comprehensive framework of cyberlaws
- No censorship of the Internet
- World-class physical and IT infrastructure
- Globally competitive telecommunication tariffs and services
- High-powered implementation agency, the Multimedia Development Corporation, to provide consultancy and assistance within the MSC
- High quality, planned urban development
- Excellent R&D facilities
- Green and protected environment

11.0 INCENTIVES FOR A KNOWLEDGE-BASED ECONOMY

Malaysia is in the process of transforming itself from a production-based to a knowledge-based economy. To further encourage companies to invest in knowledge-intensive activities, certain companies that qualify will be granted "Strategic Knowledge-based Status". These companies must have the following characteristics:

- the potential to generate knowledge content
- high value-added operations
- usage of high technology
- a large number of knowledge workers
- possess a corporate knowledge-based master plan

Companies granted "Strategic Knowledge-based Status" are eligible for the following incentives:

(i) Pioneer Status with tax exemption of 100% of the statutory income for a period of five years;

(ii) Investment Tax Allowance of 60% on the qualifying capital expenditure incurred within five years. The allowance can be offset against 100% of the statutory income in the year of assessment.

The above incentives are for applications received by MIDA from 21 September 2002.

Effective from the year of assessment 2003, the expenditure incurred by a company for drafting its corporate knowledge-based master plan is eligible for deduction in the computation of income tax. The deduction can be claimed when the company begins to implement its corporate knowledge-based master plan.

12.0 GENERAL INCENTIVES

This section covers other incentives not mentioned above and may be applicable for the following sectors: manufacturing, agricultural, tourism, environmental management, research and development, training, information and communication technology, Approved Service Projects and manufacturing related services.

12.1 Industrial Building Allowance

An Industrial Building Allowance (IBA) is granted to companies incurring capital expenditure on construction or purchase of a building that is used for specific purposes, including manufacturing, agriculture, mining, infrastructure facilities, research, Approved Services Projects and hotels that are registered with the Ministry of Culture, Arts and Tourism. Such companies are eligible for an initial allowance of 10% and an annual allowance of 3%. As such, the expenditure can be written off in 30 years.

Claims should be submitted to the IRB.

12.2 Infrastructure Allowance

Companies in the States of Sabah and Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia are also eligible for an infrastructure allowance of 100%. Companies eligible are those engaged in the manufacturing, agricultural, hotel, tourism or other industrial/ commercial activities and

which incur qualifying capital expenditure on infrastructure such as reconstruction, extension or improvement of any permanent structure including bridges, jetties, ports and roads.

These companies can offset the allowance against 85% of their statutory income in the year of assessment. The remaining statutory income will be taxed at the prevailing company tax rate. Any unutilised allowance can be carried forward to the subsequent years until is fully utilised.

This incentive applies to all applications received by 31 December 2005.

Claims should submitted to the IRB.

12.3 Tariff Related Incentives

12.3.1 Exemption from Import Duty on Raw Materials/ Components

Full exemption from import duty can be considered on raw materials/components, regardless whether the finished products are meant for the export or domestic market.

With regard to products for the export market, full exemption from import duty on raw materials is normally granted, provided the raw materials/components are not produced locally or, where they are produced locally, are not of acceptable quality and price.

As for products for the domestic market, full exemption from import duty on raw materials and components that are not produced locally can be considered. Full exemption can also be considered if the finished product made from dutiable raw materials/components is not subject to any import duty.

Applications should be submitted to MIDA

Hotel and tourism projects qualify for full exemption of import duty and sales tax on identified imported materials/equipment and exemption of sales tax on identified locally purchased equipment.

Applications should be submitted to the Ministry of Finance.

12.3.2 Incentive for Outsourcing Manufacturing Activities

To reduce the cost of doing business and enhance competitiveness, owners of Malaysian brands with at least 60% Malaysian equity ownership who outsource manufacturing activities are eligible for:

a) Import duty and sales tax exemptions on raw materials and components used in the manufacturing of finished products by their contract manufacturers locally or abroad

b) Import duty and sales tax exemptions on semi-finished goods by their contract manufacturers to manufacture the finished products.

Applications received from 11 September 2004 are eligible for this incentive.

Applications should be submitted to MIDA.

12.3.3 Exemption from Import Duty and Sales Tax on Machinery and Equipment

It is the policy of the government not to impose taxes on machinery and equipment used directly in the manufacturing process and not produced locally. No taxes are therefore imposed on most categories of machinery and equipment. In cases where the imported machinery and equipment are taxable but are not available locally, full exemption is given on import duty and sales taxes. For locally purchased machinery and equipment, full exemption is given on sales tax.

12.3.4 Exemption from Import Duty and Sales Tax on Spares and Consumables

Manufacturing companies qualify for import duty and sales tax exemptions on spares and consumables that are not produced locally. Exemption is selective and based on the following:

- the company's level of exports should be at least 80% of production, or
- the spares and consumables have limited demand and do not have potential for domestic production, or
- the import duty on such items exceeds 5%.

12.3.5 Drawback of Import Duty, Sales Tax and Excise Duty

Under the Custom Act 1967, Sales Tax Act 1972 and Excise Act 1976, a drawback of import duty, sales tax and excise duty that have been paid may be claimed by a manufacturer if the parts, raw materials or packaging materials are used in the manufacture of goods for export within a year.

Excise duties are imposed on a selected range of goods manufactured in Malaysia. Goods which are subject to excise duties include intoxicating liquor, cigarettes containing tobacco, motor vechicles, playing cards and mahjong tiles.

The movement of goods from the principal customs area or licensed premises (for goods subject to excise duty) for use in the manufacture of other products by a factory in a Free Zone (FZ) or Licensed Manufacturing Warehouse (LMW) or the islands of Langkawi, Labuan and Tioman is considered as exports from Malaysia.

Applications should be made to the Royal Customs Department.

12.3.6 Sales Tax Exemption

Manufacturers licensed under the Sales Tax Act 1972 qualify for sales tax exemption on the inputs of their manufacturing sperations. Manufacturers with annual sales turnover of less than RM100,000 are exempted from licensing and are thus exempted from paying sales tax on their output. However, these manufacturers can opt to be licensed and obtain sales tax exemption on inputs instead.

Certain categories of goods are exempted from sales tax at both the input and output stages. These include all goods (inclusive of packaging materials) used in the manufacture of controlled articles, pharmaceutical products, milk products, batik fabrics, perfumes, beauty or make up preparations, photographic cameras, wrist-watches, pens, computers and computer peripherals, parts and accessories; carton boxes/cases, products in the printing industry, agricultural or horticultural sprayers, plywood, re-treaded tyres, uninterruptible power systems, machinery, and manufactured goods for export.

Applications can be made to the Royal Customs Department.

12.3.7 Import Duty Exemption on Imported Medical Devices for Purpose of Kitting

To encourage local manufacturers of medical devices to kit their products to add value as well as to enhance their competitiveness, full import duty exemption is given on medical devices that are imported for the purpose of kitting or producing complete procedural sets, provided these medical devices are not manufactured locally.

Applications received from 11 September 2004 are eligible for this incentive.

Applications should be submitted to MIDA.

12.4 Incentives for Export

12.4.1 Double Deduction for the Promotion of Exports

Certain expenses incurred by resident companies in seeking opportunities to export Malaysian manufactured and agricultural products and services qualify for double deduction. The eligible expenses are those incurred in:

- overseas advertising, publicity and public relations work
- supplying samples abroad, including delivery costs
- undertaking export market research
- preparing tenders for supply of goods overseas
- supplying technical information abroad
- preparing exhibits and participation costs in trade/industrial exhibitions, virtual trade shows and trade portals and fares for overseas travel by company employees for business
- accommodation expenses up to RM300 per day and sustenance expenses up to RM150 per day for company representatives who travel overseas for business
- maintaining sales offices and warehouses overseas to promote exports
- hiring professionals to design packaging for exports, subject to the company using local professional services

- undertaking feasibility studies for overseas projects identified for the purpose of tenders
- participating in trade or industrial exhibitions in the country or overseas
- preparing architectural and engineering models, perspective drawings and 3-D animations for participating in competitions at international level. This is effective for the year of assessment 2005
- participating in exhibitions held in Malaysian Permanent Trade and Exhibition Centres overseas

With effect from the year of assessment 2003, partnerships and sole proprietorships registered with the Companies Commission of Malaysia are also eligible for the above incentive. To qualify they must provide the following professional services:

- legal
- accounting (including taxation and management consultancy)
- architectural (including town planning and landscaping)
- engineering and integrated engineering (including valuation and quality surveying)
- medical and dental

For pioneer companies, the deduction is accumulated and allowed against the post-pioneer income.

12.4.2 Single Deduction for the Promotion of Exports

Certain expenses incurred by resident companies in looking for opportunities to export Malaysian manufactured and agricultural products and services qualify for single deduction. The eligible expenses are those incurred in:

- registration of patents, trade marks and product licensing overseas
- hotel accommodation for a maximum of three nights in providing hospitality to potential importers invited to Malaysia.

12.4.3 Double Deduction on Export Credit Insurance Premiums

Premium payments on export credit insurance qualify for double deduction.

12.4.4 Special Industrial Building Allowance for Warehouses

An annual allowance of 10% of qualifying capital expenditure is given for buildings used as warehouses for storing goods for export and re-export.

12.4.5 Double Deduction on Freight Charges

Manufacturers who ship their goods from Sabah and Sarawak to Peninsular Malaysia via ports in Peninsular Malaysia qualify for double deduction on freight charges.

12.4.6 Incentive for the Implementation of RosettaNet

RosettaNet is an open Internet-based common business messaging standard for supply chain management linkups with global suppliers.

To encourage local small and medium-scale companies to adopt RosettaNet in order to become more competitive in the global market, the expenditure and contributions incurred by companies in the management and operation of Rosetta Net Malaysia and in assisting local small and medium scale-companies to adopt RosettaNet, are eligible for income tax deduction.

The eligible expenditure and contributions are those on equipment (computers and servers) and salaries for full time employees seconded to RosettaNet Malaysia; contribution of software, sharing of software and programming, as well as the training of the staff of local small and medium-scale companies to use RosettaNet.

Claims should be submitted to the IRB.

12.4.7 Double Deduction for the Promotion of Malaysian Brand Names

To promote Malaysian brand names, expenditure incurred within the country for advertising and professional fees paid to promotion companies qualify for double deduction provided that:

- the company owning the brand name is at least 70% Malaysian-owned
- the brand is registered in Malaysia or overseas, and
- the product meets export quality standards.

Claims should be submitted to the IRB.

12.5 Training Incentives

12.5.1 Double Deduction for Approved Training

Manufacturing and non-manufacturing companies that do not contribute to the Human Resource Development Fund (HRDF) qualify for double deduction on expenses incurred for approved training.

For the manufacturing sector, the training could be undertaken in-house or at approved training institutions. However, for the non-manufacturing sector, the training should be held only at approved training institutions. Approval is automatic when the training is at approved institutions.

For the hotel and tour operation business, training programmes, in-house or at approved training institutions, to upgrade the level of skills and professionalism in the tourism industry should be approved by the Ministry of Culture, Arts and Tourism.

Applications should be submitted to MIDA.

12.5.2 Deduction for Pre-Employment Training

Training expenses incurred before commencement of business qualify for a single deduction. Nevertheless, companies must prove that they will employ the trainees.

Claims should be submitted to the IRB.

12.5.3 Deduction for Non-Employee Training

Expenses incurred in providing practical training to residents who are not employees of the company can be considered for single deduction.

Claims should be submitted to the IRB.

12.5.4 Deduction for Cash Contributions

Contributions in cash to technical or vocational training institutions that are not operating primarily for profit and those established and maintained by a statutory body qualify for single deduction.

Claims should be submitted to the IRB.

12.5.5 Human Resource Development Fund (HRDF)

Please refer to Chapter 5: "*Manpower for Industry*" in MIDA's *Investment Policy and Incentives*.

12.5.6 Special Industrial Building Allowance for Training

Companies that incur expenditure on buildings used for approved industrial, technical or vocational training can claim a special Industrial Building Allowance (IBA) of 10% for 10 years on qualifying capital expenditure for the construction or purchase of a building.

Claims should be submitted to the IRB.

12.6 Incentive for Acquiring Proprietary Rights

Capital expenditure incurred in acquiring patents, designs, models, plans, trade marks or brands and other similar rights from foreigners qualify as deduction in the computation of income tax. This deduction is given in the form of annual deduction of 20% for a period of five years.

Claims should be submitted to the IRB.

12.7 Incentives for Acquiring a Foreign-Owned Company

A Malaysian-owned company that acquires a foreign-owned company abroad to acquire high technology for production within the country or to gain new export markets for local products, will be granted a deduction equivalent to the acquisition costs for five years. This incentive applies to project applications received by MIDA from 21 September 2002.

12.8 Incentive for the Use of Environmental Protection Equipment

Companies using environmental protection equipment receive an initial allowance of 40% and an annual allowance of 20% on the capital expenditure incurred on such equipment. Thus, the full amount can be written off within three years.

Claims should be submitted to the IRB.

12.9 Donations for Enviromental Protection

Donations to an approved organisation exclusively for the protection and conservation of the environment qualify for single deduction.

Claims should be submitted to the IRB.

12.10 Incentive for Employee's Accomodation

When a building is used for employees for the purpose of living accomodation in a manufacturing operation, an Approved Services Project, hotel or tourism business, a special Industrial Building Allowance of 10% of the expenditure incurred on the construction/purchase of the building is given for 10 years.

Claims should be submitted to the IRB.

12.11 Incentives for Employees Child Care Facilities

Expenditure incurred for the construction/purchase of the buildings for the purpose of the providing child care facilities for employees are eligible for a special Industrial Building Allowance of 10% for 10 years.

A single deduction also applies to gifts in kind and cash to provide and maintain a child care centre for the benefit of employees.

Claims should be submitted to the IRB.

D Taxation

1.0 TAXATION IN MALAYSIA

All income of companies and individuals accrued in, derived from or remitted to Malaysia are liable to tax. However, income remitted to Malaysia by resident companies derived from outside Malaysia and (except those involved in banking, insurance, air and sea transportation business), non-resident companies and non-resident individuals are exempted from tax.

Effictive from the year of assesment 2004, income remitted to Malaysia by a resident individual is exempted from tax.

To modernise and streamline the tax administration system, the assessment of income tax was changed to a current year basis of assessment from the year 2000. In 2001, the Self-Assessment System replaced the Official Assessment System for companies. This Self-Assessment System was implemented for businesses, partnerships, co-operatives and salaried groups in 2004.

Apart from income tax, there are other direct taxes such as stamp duty and real property gains tax, and indirect taxes such as sales tax, service tax, excise duty, import duty and export duty.

2.0 SOURCES OF INCOME LIABLE TO TAX

The following sources of income are liable to tax:

- Gains and profits from trade, profession and business
- Gains or profits from an employment (salaries, remunerations etc.)
- Dividends, interests or discounts
- Rents, royalties or premiums
- Pensions, annuities or other periodic payments
- Other gains or profits of an income nature

Chargeable income is arrived at after adjusting for allowable expenses incurred in the production of the income, capital allowances and incentives, where applicable. Section 34 of the Income Tax Act 1967 allows specific provisions for bad or

doubtful debts. However, no deduction for book depreciation is allowed although capital allowances are granted. Unabsorbed business losses may be carried forward indefinitely to offset against business income, except for companies with Pioneer Status (other than contract R&D companies).

3.0 COMPANY TAX

A company, whether resident or not, is assessable on income accrued in or derived from Malaysia. Income derived from sources outside Malaysia and remitted by a resident company is not subject to tax, except in the case of the banking and insurance business, and sea and air transport undertakings. A company is considered a resident in Malaysia if the control and management of its affairs are exercised in Malaysia.

A tax rate of 28% is applicable to both resident and non-resident companies. A company carrying on petroleum upstream operations is subject to a petroleum income tax of 38%.

4.0 PERSONAL INCOME TAX

All individuals are liable to tax on income accrued in, derived from or remitted to Malaysia. However, a non-resident individual will be taxed only on income earned in Malaysia. The rate of tax depends on the individual's resident status, which is determined by the duration of his stay in the country as stipulated under Section 7 of the Income Tax Act 1967. Generally, an individual residing in Malaysia for more than 182 days in a calendar year is regarded as a tax resident.

Effective from the year of assessment 2004, income remitted to Malaysia by a resident individual is exempted from tax.

4.1 Resident Individual

A resident individual is taxed on his chargeable income after deducting tax reliefs at a graduated rate from 0% to 28%.

4.1.1 Personal Relief

The chargeable income of an individual resident is arrived at after making several deductions. These include the personal reliefs for self (a further RM6,000 for that individual if he is a disabled person), spouse and unmarried children below 18 years of age; parents' medical expenses; medical expenses on serious diseases including medical examinations for individual, spouse or child; expenditure for purchase of basic support

equipment for the individual, spouse, child or parent who is disabled; cost incurred for the purchase of books, journals, magazines and other similar publications for the purpose of enhancing knowledge; and contributions to the Employees Provident Fund (EPF), life insurance premiums and insurance premiums for education or medical benefits.

An amount limited to a maximum of RM5,000 on fees expended by the individual for any course of study up to tertiary level for the purpose of acquiring scientific, technical, vocational, industrial, and information and communications technology (ICT) skills at the local institutions of higher learning in Malaysia recognized by the Government is also allowed as a deduction.

4.1.2 Tax rebate

The tax liability of a resident individual is reduced by way of the following rebates:

(a) An individual with a chargeable income not exceeding RM35,000 enjoys a rebate of RM350. Where the wife is not working or the wife's income is jointly assessed, she also enjoys a further rebate of RM350. Similarly, a wife who is assessed separately will also enjoy a RM350 rebate, provided her chargeable income does not exceed RM35,000.

(b) The amount paid in respect of any zakat, fitrah or other Islamic religious dues.

(c) RM400 towards the purchase of a personal computer once every 5 years by an individual or spouse with effect from year of assessment 2005, the rebate is increased to RM500.

(d) Any fee paid to the government for the issue of an employment pass, visit pass or work permit.

4.2 Non-resident Individual

A non-resident individuals is liable to tax at the rate 28% without any personal relief. However, he can claim rebates in respect of levy paid to the government for the issuance of an employment work permit.

5.0 WITHHOLDING TAX

Non-resident individuals are subject to a withholding tax of:

(a) 10% on special classes of income such as the use of moveable property; technical advice, assistance or services; installation services on the supply of plant, machinery, etc; and personal services associated with the use of intangible property. Effective from 21 September 2002, payments to non-residents for services rendered abroad will not be liable to the withholding tax of 10%

(b) 10% on royalties

(c) 15% on interest

(d) 15% on services of a public entertainer

An employee on a short-term visit to Malaysia enjoys tax exemption in respect of his income from an employment exercised in Malaysia when his presence does not exceed 60 days in a calendar year. However, the income of a non-resident individual who performs independent services such as consultancy services is not exempted from tax.

6.0 REAL PROPERTY GAINS TAX

Capital gains are generally not subject to tax in Malaysia. Real property gains tax is charged on gains arising from the disposal of real property situated in Malaysia or of interest, options or other rights in or over such land as well as the disposal of shares in real property companies. The tax rates for Malaysian citizens and permanent residents are as follows:

Disposal within 2 years	30%
Disposal in the 3rd year	20%
Disposal in the 4th year	15%
Disposal in the 5th year	5%
Disposal in the 6th year and thereafter - company	5%
- individual	nil

Citizens and permanent residents also enjoy an exemption of RM5,000 or 10% of the gains, whichever is the greater, besides a one-time tax exemption on the gains arising from the disposal of one private residence.

For non-citizens and non-permanent resident individuals, gains from the disposal of real property within 5 years are subject to tax at a flat rate of 30%, after which the tax rate will be 5%.

7.0 SALES TAX

Sales tax is a single stage tax imposed at the import and manufacturing levels. In Malaysia, manufacturers of taxable goods are required to be licensed under the Sales Tax Act 1972. Companies with a sales turnover of less than RM100,000 and companies with Licensed Manufacturing Warehouse (LMW) status are exempted from this licensing requirement. However, companies with a sales turnover of less than RM100,000 have to apply for a certificate of exemption from licensing.

Licensed manufacturers are taxed based on their output while manufacturers that are not licensed or exempted from licensing need to pay tax on their inputs. To relieve small-scale manufacturers from paying sales tax upfront on their inputs, they can opt to be licensed under the Sales tax Act 1972 in order to purchase tax-free inputs. With this, small-scale manufacturers can opt to pay sales tax on their finished products.

Sales tax is generally at 10%. However, raw materials and machinery for use in the manufacture of taxable goods are eligible for exemption from the tax, while inputs for selected non-taxable products are also exempted.

Certain non-essential foodstuffs and building materials are taxed at 5% cigarettes at 25% and liquor at 20%. Certain primary commodities, basic foodstuffs, basic building materials, certain agricultural implements and heavy machinery for use in the construction industry are exempted. Certain tourism and sports goods, books, newspapers and reading materials are also exempted.

8.0 SERVICE TAX

A service tax applies to certain prescribed goods and services in Malaysia including food, drinks and tobacco; provision of rooms for lodging and premises for meetings, conventions, and cultural and fashion shows; health services, and provision of accommodation and food by private hospitals.

The tax also applies to professional and consultancy services provided by lawyers, engineers, surveyors, architects, accountants, advertising agencies, consultancy firms, insurance companies, motor vehicle service and repair centres, telecommunication services companies, security and guard services agencies, recreational clubs, estate agents, parking space services operators, courier service firms and veterinary doctors.

Effective from 1 January 2003, professional services provided by a company to companies within the same group will be exempted from the current services tax of 5%. This applies to service provided by public accountants, advocates and solicitors, engineers, architects, surveyors (including valuers, assessors and real estate agents), consultants and management service providers. Courier services provided from a point within Malaysia to a destination outside Malaysia will also be exempted from the service tax of 5% with effect from 1 January 2003.

The tax base has been widened to include services such as those provided by car rental agencies licensed under the Commercial Vehicles Licensing Board Act 1987 having an annual sales turnover of RM300,000 and above; employment agencies having an annual sales turnover of RM150,000 and above; and companies providing management services, including project management and coordination services, having an annual sales turnover of RM150,000 and above. Hotels having more than 25 rooms and restaurants within such hotels are subject to this tax.

Generally, the imposition of service tax is subject to a specific threshold based on an annual turnover ranging from RM150,000 to RM500,000.

9.0 IMPORT DUTY

In Malaysia, import duty is mostly imposed ad valorem although some specific duties are imposed on a number of items. Nevertheless, over the last few years, Malaysia has abolished import duties on a wide range of raw materials, components and machinery.

Furthermore, Malaysia is committed to the ASEAN Common Effective Preferential Tariffs (CEPT) programme under which import duties imposed on most goods from ASEAN countries with a minimum 40% ASEAN content will be reduced to between 0% and 5% by the year 2003.

10.0 EXCISE DUTY

Excise duties are levied on selected products manufactured in Malaysia, namely, cigarettes, liquors, playing cards, mahjong tiles and motor vehicles.

To encourage the exports of locally manufactured goods, companies with Licensed Manufacturing Warehouse (LMW) status that manufacture goods subject to excise duties are exempted from being licensed under the Excise Duty Act 1976.

11.0 AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION

Agreements for the Avoidance of Double Taxation prevent incidences of double taxation on income such as business profits, dividends, interest and royalties that are derived in one country and remitted to another country. Currently, tax treaties between the following countries (by alphabetical order) are in force:

Argentina*
Australia
Austria
Bahrain
Bangladesh
Belgium
Canada
China
Czech Republic
Denmark
Egypt
Fiji
Finland
France
Germany
Hungary
India#
Indonesia
Ireland
Italy
Japan#
Jordan
Korea, South
Luxembourg
Malta
Mauritius
Mongolia
Netherlands
New Zealand
Norway
Pakistan
Papua New Guinea
Philippines
Poland
Romania
Russia
Saudi Arabia*
Singapore
Sri Lanka#
Sweden
Switzerland
Thailand
Turkey
United Arab Emirates
United Kingdom#
United States of America*
Uzbekistan
Vietnam

In addition, an Agreement for the Avoidance of Double Taxation has been signed between the Malaysian Friendship and Trade Centre in Taipei (MFTC) and the Taipei Economic and Cultural office in Kuala Lumpur (TECO).

* *Limited to shipping and air transport services.*
\# *New agreement.*

E Banking, Finance and Foreign Exchange Administration

1.0 THE BANKING SYSTEM IN MALAYSIA

The banking system, comprising the commercial banks, merchant banks and finance companies, is the major institutional source of credit to the industrial sectors in Malaysia. In addition, there are also development finance institutions which provide financing expecially to the industrial sector.

1.1 The Central Bank

The central bank, Bank Negara Malaysia, is responsible for maintaining monetary stability and ensuring a sound financial system. Towards this, Bank Negara Malaysia regulates and supervises the Malaysian banking system, development finance institutions and insurance companies. Bank Negara Malaysia also issues the Malaysian currency (the Ringgit), acts as a banker and economic and financial adviser to the government, administers the country's foreign exchange control regulations, and acts as lender of last resort to the banking system.

1.2 Financial Institutions

The commercial banks are the main players in the banking system. As at August 2004, there were ten domestic and 13 locally incorporated foreign commercial banks operating through a network of 1,660 branches across the country. Besides that, six domestic banks have a total of 46 branches overseas. In addition, 22 foreign banks maintain representative offices that do not conduct normal banking business, providing only liaison services and facilitating information between business interests in Malaysia, in their home countries and in countries where they have representations.

Ten merchant banks, some of which are affiliated to investment banks established overseas, provide a wide range of services through 17 branches. Merchant banks play a role in the short-term money market and capital raising activities including underwriting, loans syndication, corporate finance and management advisory services, arranging for the issue and listing of shares, as well as investment portfolio management.

Malaysia also has two Islamic banks which provide banking services based on Islamic principles. The first to be established, Bank Islam Malaysia Berhad, operates through 87 branches in the country while more recently-established Bank Muamalat Malaysia Berhad has 48 branches. In addition to the Islamic banks, there are also 13 commercial banks that offer products and services under the Islamic banking scheme.

In addition to the commercial banks, 9 finance companies, through their 723 branches, accept savings and fixed deposits and provide hire purchase financing, consumer financial,housing loans, block discounting and leasing transactions.

There also seven discount houses in Malaysia that specialise in short-term money market operations and mobilise deposits from the financial institutions and corporations. They are permitted to invest funds in treasury bills, government securities, banker's acceptances, negotiable instruments of deposit and private debt securities, and accept short-term funds. In addition, there are 599 scheduled institutions comprising building credit companies, credit token companies, factoring companies and leasing companies that provide credit and financing facilities to the public.

Malaysia has several development finance institutions (DFIs) that were specifically set up to promote certain strategic sectors of the economy. These DFIs specialise in providing medium to long-term loans, equity capital and guarantees for loans. DFIs also provide consulting and advisory services in the identification and development of new projects, besides financial, technical and managerial advice and assistance. DFIs compliment banking institutions in providing financing to the srategic sectors such as the agriculture, infrastructure, shipping, manufacturing and export sectors, and SMEs.

The Export-Import Bank of Malaysia (Exim Bank) finances and facilitates Malaysia's foreign trade and investments, concentrating on medium to long-term credit for Malaysian exporters and investors as well as buyers of Malaysian goods. Another institution, the Malaysian Export Credit Insurance Berhad (MECIB), offers export insurance cover and guarantees.

2.0 EXPORT CREDIT REFINANCING (ECR)

Export Credit Refinancing (ECR) is a scheme under which the Exim Bank provides short-term financing at competitive interest rates to direct/indirect exporters through the commercial banks. The facility is offered by commercial banks which are then refinanced by Exim Bank. An exporter who wishes to use the ECR facility should arrange for an ECR credit line with his ECR bank and then obtain access to the ECR facilities from Exim Bank.

2.1 Eligibility Creteria

The ECR facility is available to direct exporters (manufacturing companies/agricultural product producers/trading companies) and indirect exporters (suppliers of domestic inputs), while the products to be exported must not be listed under the First Schedule of Custom Duties Order (list of goods which is prohibited to be exported).

2.2 Type of Facilities

i. The pre-shipment ECR facility is a loan advanced to manufacturing companies to falicitate the production of eligible goods or to trading companies for the purchase of intermediate/finished goods, for export prior to shipment.

ii. The post-shipment ECR facility enables Malaysian exporters to obtain immediate funds after shipment of eligible goods that are sold on sight/usance credit terms.

2.3 Method of Financing

Two methods of financing are available for exporters under the pre-shipment ECR i.e. the order-based method and certificate of performance (CP) method. Under the order-based method, the pre-shipment ECR financial is advanced to direct exporters against the purchase orders received from their buyers.

The CP method is an alternative only to direct exporters who are consistently exporting at least RM1.0 million of eligible goods annually.

The method of financing under the post-shipment ECR facility is through bills discounting. Exporters should submit a full set of export documents to the ECR bank to create a post-shipment bill to enable it to be discounted at the Exim Bank.

2.4 Period and Amount of Financing

The maximum period of financing is four months and six months for pre-shipment ECR and post-shipment ECR respectively. Under the order-based method, exporters can obtain financing for 95% of the value of their export order, while under the CP method, the amount of financing for manufacturing companies and trading companies is 80% and 90% respectively of the export value of eligible product in the preceeding 12 months.

The minimum amount of financing is RM10,000 and the maximum is RM50 million, with a minimum drawdown of RM2,000. The exporter may request for an additional amount of financing from the Exim Bank with the recommendation of the commercial bank.

3.0 THE SECURITIES MARKET IN MALAYSIA

3.1 Securities Commission

The Securities Commission (SC) established in 1993, regulates the capital market in Malaysia pursuant to the Securities Commission Act 1993, Securities Industry Act 1983, Futures Industry Act 1993 and Securities Industry (Central Depositories) Act 1991. Another prong of the SC's role is to facilitate the orderly development of an innovative and competitive capital market in Malaysia. The SC is a self-funding statutory body with investigative and enforcement powers, and reports to the Minister of Finance.

The SC regulates all matters on securities and futures contracts, take-overs and mergers of companies, and unit trust schemes. It is the authority for registering prospectuses of corporations (other than unlisted recreational clubs) and approving corporate bond issues. The SC supervises exchanges, clearing houses and central depositories, and is also responsible for licensing and supervising all licensed persons.

The SC introduced the Capital Market Masterplan (CMP) in 2001. This is a comprehensive plan that charts the strategic positioning and future direction of the Malaysian capital market for the next 10 years. The Masterplan prioritises the immediate needs of the capital market and charts its direction and long-term growth in anticipation of global developments to its environment.

Visit the SC website (*www.sc.com.my*) for more information on the SC and the CMP.

3.2 Bursa Malaysia Berhad

The first formal stock exchange, the Malayan Stock Exchange, was set-up in 1960 with two trading rooms, in Singapore and Kuala Lumpur. With the separation of Singapore from Malaysia in 1965, the Stock Exchange of Malaysia and Singapore (SEMS) was established. With the termination of currency interchangeablility between Malaysia and Singapore in 1973, SEMS was separated into two i.e. the Kuala Lumpur Stock Exchange Berhad (KLSEB) and the Stock Exchange of Singapore. A new company limited by guarantee, the Kuala Lumpur Stock Exchange (KLSE) took over operations of KLSEB in 1976. Following a demutualisation exercise, KLSE became a public company limited by shares on 5 January 2004.

With the conversion, KLSE vested and transferred its exchange business to a wholly-owned subsidiary, Bursa Malaysia Securities Berhad whilst the demutualised KLSE became the Exchange Holding Company known as Bursa Malaysia Berhad (Bursa Malaysia) with effect from 20 April 2004.

Bursa Malaysia is a front-line regulator and market operator for exchange-traded securities and derivatives. It has its Memorandum and Articles of Association and Ruless which govern the conduct of its Participating Organisations and Trading Participants in securities and derivatives dealings respectively.

It is also responsible for the surveillance of the marketplace, and for the enforcement of its Listing Requirements, which spell out the criteria for listing, disclosure requirements and standards to be maintained by listed companies.

(i) Bursa Malaysia Group of Companies

Bursa Malaysia Group provides a comprehensive range of services to support the securities industry in Malaysia.

(a) **Bursa Malaysia Securities Berhad (Bursa Securities)** provides a marketplace for equities trading annd is made up of:

- The Main Board for larger capitalised companies;
- The Second Board for the medium-sized companies; and
- MESDAQ Market for technology and growth companies

b) **Bursa Malaysia Derivatives Berhad (Bursa Derivatives)**, formerly known as Malaysia Derivatives Exchange Berhad, operates the derivatives market. Bursa Derivatives was a result of the consolidation between the financial futures and commodities futures exchanges. Bursa Derivatives provides investors with hedging instruments and currently offers commodities, financial and equity-related futures. Current products available are KLCI Futures and Options, Kuala Lumpur Interbank Offered Rate (KLIBOR) Interest Rate Futures, Three-Year, Five-Year and Ten-Year Malaysian Government Securities Futures, Crude Palm Oil Futures and Crude Palm Kernel Oils Futures.

c) **Labuan International Financial Exchange (LFX)** offers trading facilities that cater for a wide range of multi-currency financial instruments in an offshore environment. These instruments can be based on conventional or Islamic based principles. LFX offers web-based trading and on-line submission of documents, including equity and debt instruments, bonds, asset backed securities and

mutual funds. Instruments that are currently listed include 13 conventional bond issues, five investment fund and five Islamic Notes.

d) **Bursa Malaysia Securities Clearing Sdn Bhd** (formerly known as Securities Clearing Automated Network Services Sdn. Bhd.) is the equity clearing house while the Bursa Malaysia Derivatives Clearing Berhad (formerly known as Malaysia Derivatives Clearing House Bhd) is the derivatives clearing house. They provide clearing and settlement facilities for their respective markets.

e) **Bursa Malaysia Depository Sdn Bhd** (formerly known as Malaysian Central Depository Sdn Bhd) provides efficient central clearing and settlement of securities, and operates the central depository system (CDS).

(ii) Bursa Malaysia Corporate Governance

In a demutualised structure, a single Board oversees Bursa Malaysia Group. The Board has a balanced representation structure consisting: Public Interest directors, Independent directors, Shareholder directors and the Chief Executive Officer to safeguard the interest of all stakeholders.

The Board is also augmented by Board Committees that are based on corporate governance best practices. Consultative Panels made up of the different market and settlement segments are set up to maximise inputs from industry representatives.

(iii) Product and Services

Bursa Malaysia is today one of the largest bourses in ASEAN, with 953 companies (as 19 November 2004) listed either on the Main Board, Second Board or MESDAQ Market. These companies, which mirror the diversity and scope of the Malaysian economy, are categorised into 14 different sectors for Plantation, Mining, Trading/Services, to Technology, Infrastructure and Finance, to name a few.

(iv) Stockbroking Companies

Currently, there are 34 stockbroking companies known as Participating Organisations offering services in the dealing of securities listed on Bursa Malaysia Securities. Out of these, 6 stockbroking companies have been granted universal broker status. Universal brokers are able to offer a full scope of integrated capital market services, i.e. corporate finance, debt securities trading and share dealing.

(v) Trading Participants

A Trading Participant is a company who owns at least one (1) Preference Share conducting business as futures broker licensed under the Futures Industry Act and carrying on trading in contracts traded on the Bursa Malaysia Derivatives Berhad. A Trading Participant has to be registered with the Securities Commission. Currently, there are 15 Trading Participants.

4.0 OFFSHORE FINANCIAL SERVICES

4.1 Labuan Offshore Financial Services Authority (LOFSA)

The Labuan Offshore Financial Services Authority (LOFSA) is a regulatory body that to spearheads and coordinates efforts to promote and develop Labuan as an International Offshore Financial Centre (IOFC).

It streamlines the government machinery in supervising the activities and operations of the offshore financial services industry, undertakes research and development work, and plans the growth and promotion of the IOFC.

The incorporation and registration of companies fall under the purview of LOFSA. LOFSA also oversees the Labuan International Financial Exchange and Labuan's offshore industries such as banking, insurance, securities, and trust and fund management.

Offshore business activities undertaken by Labuan offshore companies refer to trading and non-trading activities. Offshore trading activities include banking, insurance, trading, management, licensing or any other activity, which is not an offshore non-trading activity. Offshore non-trading activities refer to holding of investments in securities, stocks, shares, loans, deposits and immovable properties by an offshore company on its own behalf.

The Labuan IOFC is not subject to the exchange control rules and regulations of Malaysia. As such, the offshore business in Labuan is virtually unaffected by the country's exchange control measures. This is because the nature of offshore business in Labuan is basically foreign currency-based and not conducted with non-residents.

Over 5,000 offshore companies have set up operations in Labuan, including trust companies, banks, insurance and insurance-related companies, and fund management and leasing companies.

4.2 Incentives for Offshore Financial Services

4.2.1 Minimum Tax

An offshore company carrying on an offshore trading activity can opt to pay a tax each year at the rate of 3% of its net audited profits or a fixed sum of RM20,000 a year;

An offshore company which has no basis period for a year of assessment is taxed a fixed rate of RM20,000.

4.2.2 Abatement of Tax for Professional Services

Any person or his employee or a company rendering qualifying professional services to an offshore company in Labuan is exempted from income tax up to 65% of the statutory income from that source until year of assessment 2004. This includes legal, accounting, financial and secretarial services.

4.2.3 Abatement of Tax For Employment

- Non-citizens employed in a managerial capacity in an offshore company in Labuan enjoy income tax exemption up to 50% of the gross income.
- Non-citizen trust officers working in a Labuan trust company enjoy income tax exemption of up to 50% of gross employment.

4.2.4 Exemptions from Income Tax

The following exemptions are available for offshore companies under the Income Tax Act 1967:

- Dividends paid to a resident or a non-resident person
- 100% tax exemption on Director's fees paid to a non-citizen Director
- 50% tax exemption on Labuan and housing allowances paid to Malaysian citizens working in an offshore company

Offshore Companies are exempted from withholding tax for the following :

- Interest paid to a resident person or a non-resident who is not engaged in the business of banking, finance or insurance
- Interest paid to a non-resident person or another offshore company unless the interest accrues to a banking, finance company or insurance business by a non-resident

- Lease rental paid to non-resident
- Technical or management fee paid to a non-resident or another offshore company
- Royalty to a non-resident person or another offshore company
- Distributions made by an offshore trust to non-resident beneficiaries

4.2.5 Stamp Duty Exemption

Offshore business transactions by an offshore company (including M&A of an offshore company and transfer of shares in an offshore company) are exempted from stamp duty.

5.0 EXCHANGE CONTROL PRACTICE

The foreign exchange administration rules in Malaysia are aimed at providing an approriate framework that will influence capital flows and facilities currency risk management to promote financial and economic stability of the country.

The rules complement the overall macroeconomic policies and are reviewed regularly in line with the changing environment. Reviews are aimed at reducing the cost of doing business, improving regulatory delivery system and encouraging better risk management activities by residents and non-residents as well as promoting the development of domestic foreign exchange market to promote stability in the financial system and economy of the country.

All rules are applied uniformly to transactions with all countries, except the State of Israel for which special restrictions apply.

For foreign exchange administration purposes, the definition of residents and non-residents are as follows:

Residents comprise:

- Citizens of Malaysia (excluding persons who have obtained permanent resident status of a territory outside Malaysia and are residing abroad)
- Non-citizens who have obtained permanent resident status in Malaysia and are residing permanently in Malaysia
- Persons, whether body corporate or unincorporated, registered or approved by any authority in Malaysia

Non-residents comprise:

- Persons other than residents
- Overseas branches, overseas subsidiaries, overseas regional offices, sales offices, representative offices of resident companies
- Embassies, Consulates, High Commissions, supranational or international organisations recognised by the Government of Malaysia
- Malaysian citizens who have obtained permanent resident status of a territory outside Malaysia and are residing outside Malaysia

5.1 Non-residents

Non-residents are free to invest in Malaysia in any form. To complement their investment strategy, non-residents may obtain financing from licensed onshore banks (licensed commercial and Islamic banks in Malaysia) both in ringgit and foreign currency. They are also able to enter into foreign exchange contracts with licensed onshore banks to actively manage their exchange risk exposures arising from their ringgit investments. Non-residents are free to exchange their foreign currency into ringgit and vice versa of any amount as well as repatriate their capital, profits and income earned from Malaysia in foreign currency. Details are as follows:

5.1.1 Investment in Malaysia

(i) Setting-up a Business In Malaysia (Equity Investment)

- A non-resident may incorporate a company, register a branch, and/or establish sole proprietorship or partnership in Malaysia with the Companies Commission of Malaysia. Details can be found at *http://www.ss.com.my/*.
- A company or business registered with any authority in Malaysia is a resident in Malaysia, irrespective of whether the company/firm is resident or non-resident-owned or controlled. Such businesses will be governed by rules relevant to residents.

(ii) Purchasing Portfolio or Debt securities Issued In Malaysia

A non-resident is free to purchase any ringgit securities, including debt securities (including ringgit bonds issued by non-residents) in Malaysia.

(iii) Purchase of Immovable Properties In Malaysia

- A non-resident is free to obtain up to three loans to purchase immovable property in Malaysia from Malaysian financial institutions. The amount of borrowing is determined by the financial institutions' own policies and the Foreign Investment Committee (FIC) guidelines. The borrowing would be applicable for both residential and commercial property. Consideration would be given if the non-resident needs to obtain more than three property loans.
- Guidelines issued by the FIC on purchases of immovable properties by a non-resident can be found at *http://www.epu.jpm.my/*.

(iv) Placement of Deposits in Ringgit or Foreign Currency

(a) Ringgit Account (External Accounts)

- A non-resident may open and maintain any number of ringgit-denominated accounts with any licensed onshore banks, licensed finance companies or licensed merchant banks in Malaysia.
- A ringgit account belonging to a non-resident or where the beneficiary of the funds is a non-resident is known as an External Account.
- There is no restriction on the amount of ringgit funds that can be placed in the External Account.
- The ringgit funds in an External Account can be used for payments to residents for purchases of ringgit assets or services provided in Malaysia.
- Funds in the External Account can be converted into foreign currency with a licensed onshore bank and repatriated at any time.

(b) Foreign Currency Account

- A non-resident may open and maintain any number of foreign currency accounts or amounts with any licensed onshore banks and licensed merchant banks in Malaysia.

- No restrictions are imposed on the use of foreign currency funds in the foreign currency account. Funds in such accounts may be converted into ringgit with licensed onshore banks or repatriated at any time.

(v) Lending to Residents

(a) Ringgit Credit Facilities

A non-resident may lend in ringgit to a resident who has obtained prior permission of the Controller of Foreign Exchange (the Controller).

(b) Foreign Currency Credit Facilities

A non-resident may extend foreign currency credit facilities to a resident as long as the resident's total foreign currency credit facilities does not exceed the aggregate of RM50 million equivalent for a resident company on a corporate group basis and RM10 million equivalent for a resident individual. Consideration can be given for extension of foreign currency credit facilities exceeding the above limits.

5.1.2 Payment for Investment

A non-resident may pay for the investment in Malaysia in ringgit from his External Account or in foreign currency.

5.1.3 Borrowing from Residents

(i) Ringgit Credit Facilities

A non-resident is free to obtain ringgit credit facilities as follows:

- From licensed banking institutions in Malaysia up to an aggregate of RM10 million for use in Malaysia.
- From resident insurers up to the value of the cash surrender value of the insurance policy purchased by the non-resident.
- From licensed onshore banks up to RM200 million on intra-day and overnight basis by a non-resident stockbroking company or a custodian bank. The facilities are strictly for financing funding gaps due to settlement timing mismatches, unforeseen or

inadvertent/technical administration errors or delays due to time zone difference in relation to settlement of trades on Bursa Malaysia (stock exchange in Malaysia).

- From resident stockbroking companies in the form of margin financing.
- From a non-bank resident up to RM10,000.
- Up to three loans to finance the purchase of immovable properties in Malaysia.

(ii) Issuance of Ringgit Debt Securities

Malaysia allows Multilateral Development Banks or foreign multinational corporations to raise ringgit-denominated bonds in Malaysia. Applications for issuance of the ringgit bonds would be considered on the merit of each case. Further details may be found at *http://www.bnm.gov.my/fxadmin*.

(iii) Foreign Currency Credit Facilities

A non-resident may obtain any amount of foreign currency credit facilities from licensed onshore banks and approved merchant banks.

5.1.4 Hedging of Investments

(i) A non-resident is free to enter into a foreign exchange contract on spot or forward basis with a licensed onshore bank to buy ringgit to make payment to a resident.

(ii) A non-resident is also free to enter into a foreign exchange contract on spot or forward basis with a licensed onshore bank to sell ringgit funds arising from a committed transaction in Malaysia.

(iii) The maturity date of the foreign exchange contracts should be the expected date of payment or receipt of the underlying committed transaction.

(iv) The amount of the foreign exchange contracts should not exceed the expected sum of payment or receipt of the underlying committed transaction.

5.1.5 Sale of Investments

(i) A non-resident may sell any of his investments in Malaysia including securities not listed on Bursa Malaysia to a resident or another non-resident.

(ii) A resident may pay or settle the purchase from the non-resident seller in ringgit or in foreign currency.

(iii) A non-resident purchaser may also pay or settle the purchase from the non-resident seller in foreign currency or ringgit from his External Account.

5.1.6 Repatriation of Funds

A non-resident is free to repatriate capital, divestment proceeds, profits, dividends, rental, fees and interest arising from investments in Malaysia.

5.2 Residents

As part of ongoing efforts towards reducing cost of doing business and encouraging better risk management activities, residents are allowed to manage their funds through domestic and foreign placement of foreign currency funds, undertake investment activities outside Malaysia as well as enter into risk management arrangement with licensed onshore banks in Malaysia. Details are listed below:

5.2.1 Payments for Import of Goods and Services

(i) There is no restriction for a resident to make payments of any amount to a non-resident for import of goods and services.

(ii) Such payments must be made in a foreign currency other than the currency of the State of Israel. Prior permission is required for payment in the currency of the State of Israel or to a person who is a resident of the State of Israel.

(iii) A resident may also enter into a forward foreign exchange contract with licensed onshore banks or approved merchant banks to buy foreign currency against ringgit or another foreign currency to make payment for import from a non-resident.

5.2.2 Proceeds Arising from Export of Goods (Export Proceeds)

(i) All export proceeds are required to be repatriated to Malaysia in accordance with the payment schedule as specified in the sales contract, which should not exceed six months from the date of export.

(ii) Export proceeds must be received in foreign currency. They may be sold for ringgit or retained in foreign currency accounts (FCA) with licensed onshore banks or approved merchant banks. There is no limit on the amount of funds retained in the FCA.

(iii) A resident may enter into a forward foreign exchange contract with a licensed onshore bank to sell export proceeds for ringgit or another foreign currency.

(iv) Only resident exporters with annual gross exports exceeding the equivalent of RM50 million are required to submit quarterly reports to the Controller.

5.2.3 Investment Abroad by A Resident

(i) A resident company or individual with no domestic ringgit credit facility is free to invest abroad. The investment may be made through the conversion of ringgit or from foreign currency funds retained domestically or offshore.

(ii) A resident with domestic ringgit credit facility is also free to invest abroad its foreign currency funds maintained domestically or offshore.

(iii) In addition, a resident with domestic ringgit credit facility may convert ringgit into foreign currency up to the following limits for overseas investments, including extension of foreign currency credit facilities to non-residents:

(a) Up to RM10 million per calendar year by the company on a per corporate group basis; and

(b) Up to RM100,000 per calendar year by the individual.

(iv) For a company converting ringgit for overseas investments, it must have a minimum shareholders' funds of RM100,000 and must be in operation for at least one year.

(v) Individuals may convert ringgit into foreign currency up to the amount required for investment in foreign currency securities under the Employee Share Option/ Purchase Scheme offered by the individual employer's overseas parent or related companies.

(vi) A resident is allowed to finance overseas investment in aggregate up to RM10 million equivalent with foreign currency credit facilities.

(vii) A resident unit trust management company may invest abroad up to:

(a) the full amount of investments by its non-resident clients as well as resident clients without any domestic credit facilities; and

(b) 30% of investments by resident clients with domestic credit facilities.

(viii) These funds by different clients or companies may be pooled to benefit from economies of scale when investing abroad. Such investments should be consistent with clients' mandates and comply with the Securities Commission's guidelines.

(ix) A resident insurance company may invest abroad up to 5% of its margin of solvency while a takaful operator may invest up to 5% of its total assets.

(x) A resident insurance company or a takaful operator may also invest abroad up to 30% of the NAV of its investment-linked funds. These investments are subject to compliance with guidelines or regulations issued by Bank Negara Malaysia.

(xi) All payments for investment abroad exceeding RM50,000 should be registered with the Controller at least seven working days prior to making the payments.

5.2.4 Credit Facilities Obtained by Residents

(i) Foreign Currency Credit Facilities

- A resident may obtain trade financing facility of any amount in foreign currency from licensed onshore banks.
- In addition, a resident company may obtain credit facilities in foreign currency up to an equivalent of RM50 million in aggregate on a group basis from licensed onshore banks, licensed merchant banks and non-residents.
- A resident individual may also obtain credit facilities in foreign currency up to the equivalent of RM10 million in aggregate from licensed onshore banks, licensed merchant banks and non-residents.
- Any amount of credit facility exceeding the above permitted limits would require the prior permission of the Controller. Where the aggregate amount exceeds the equivalent of

RM1 million and up to the permitted limit, the resident (company or individual) is required to register the credit facility with the Controller, prior to loan drawdown.

- A resident may only utilise up to an aggregate of RM10 million equivalent of the foreign currency credit facilities to finance its overseas investment activities.
- There is no restriction for the repayment or prepayment of credit facilities as long as such credit facilities have been obtained in accordance with the relevant foreign exchange administration rules. Resident borrowers need to register with the Controller any proposal to prepay the credit facilities prior to effecting the prepayments.

(ii) Ringgit Credit Facilities

A resident is required to seek prior permission of the Controller to obtain any amount of credit facility in ringgit from non-residents, including from non-resident shareholders or directors.

5.2.5 Forward Foreign Exchange Contracts

(i) A resident may enter into forward foreign exchange contracts with licensed onshore banks and approved merchant banks to purchase or sell any foreign currency against ringgit or another foreign currency as follows:

(a) Any payments or receipts for import or export of goods and services as well as income, based on firm commitment or anticipatory basis.

(b) Hedging the foreign currency exposures of permitted overseas investment, including extension of credit facilities to non-residents.

(c) Any committed capital inflows or outflows, including drawdown of permitted foreign currency credit facilities, and repayment of foreign currency credit facilities up to the amount repayable within 24 months as well as payments for permitted overseas investment.

(ii) The maturity date of the forward foreign exchange contract should be the expected date of receipt or payment of the underlying transaction. In the event

foreign currency receivables are received earlier, the resident can temporarily retain the receipts in its foreign currency account, pending maturity of the forward foreign exchange contract.

(iii) For forward purchase of export proceeds, the maturity date of the forward foreign exchange contract should not be later than six months after the intended date of export.

(iv) For forward foreign exchange contract involving two foreign currencies, the use or retention of the foreign currency being purchased by the residents must comply with the current foreign exchange administration rules.

(v) A resident may also enter into interest rate swaps with licensed onshore banks, approved merchant banks and licensed offshore banks in Labuan, provided the transaction is supported by firm underlying commitment.

5.2.6 Issuance of Ringgit Private Debt Securities

Resident company is allowed to raise domestic credit facility through the issuance of ringgit Private Debt Securities regardless of amount, provided not more than RM10 million is used for investment abroad in a calendar year.

5.2.7 Foreign Currency Accounts of Residents (FCA)

(i) A resident company or individual with or without any domestic credit facilities, is free to open FCA with any licensed onshore banks, licensed offshore banks in Labuan or overseas banks to retain any amount of its foreign currency receipts, other than receipts arising from export of goods from Malaysia.

(ii) A resident exporter may open FCA with licensed onshore banks to retain any amount of foreign currency export receipts. It is also free to merge its export and non-export FCA maintained with licensed onshore banks without any restriction on the amount of foreign currency receipts retained in such accounts.

(iii) A resident may convert ringgit into foreign currency and credit into FCA maintained with licensed onshore banks, licensed offshore banks in Labuan and overseas banks subject to the permitted limits for investment abroad by residents.

(iv) A resident company maintaining FCA with licensed offshore banks in Labuan or overseas banks is required to submit monthly statement (Statement OA) to the Controller.

5.3 Special Status Granted to Selected Companies

5.3.1 Offshore Entities in the Labuan International Offshore Financial Centre

(i) An entity incorporated or registered under the Offshore Companies Act 1990 is declared as a non-resident for foreign exchange administration purposes.

(ii) An offshore entity in Labuan may buy or sell foreign currency (other than the currency of the State of Israel) against another foreign currency spot or forward with licensed onshore banks, licensed offshore banks (excluding licensed offshore investment banks) in Labuan as well as non-residents outside Malaysia. It may also buy or sell foreign currency (other than the currency of the State of Israel) against ringgit with licensed onshore banks for permitted purposes.

(iii) All offshore entities may maintain External Accounts with licensed onshore banks to facilitate the defrayment of statutory and administrative expenses in Malaysia.

(iv) An offshore insurance entity in Labuan may also use its External Accounts to facilitate the receipt of reinsurance premiums and for payment of claims arising from reinsurance of domestic insurance business.

(v) A licensed offshore bank in Labuan may receive payments in ringgit from residents arising from fees, commissions, dividends or interest from deposit of funds with onshore financial institutions.

(vi) A licensed offshore bank in Labuan may invest in assets/instruments in Malaysia for its own account provided the investments are transacted directly with resident banking institutions or resident brokers. The investments must not be financed by ringgit borrowings.

5.3.2 Multimedia Super Corridor Companies

- A company operating in Multimedia Super Corridor (MSC) that is incorporated as a legal entity is given exemption from foreign exchange administration rules upon the company being awarded the MSC status by the Multimedia Development Corporation. The exemption granted to the MSC company is solely for transactions undertaken on its own account.
- However, prior permission should be obtained to deal with Israeli residents or the currency of the State of Israel.
- The MSC company is required to submit the necessary statistical forms/reports/statements for monitoring purposes. These reports can be obtained from Bank Negara Malaysia's website, *http://www.bnm.gov.my/fxadmin*.

5.3.3 Approved Operational Headquarters

An Approved Operational Headquarters (OHQs) is allowed to:

(i) Open FCA with licensed onshore banks to retain any amount of export proceeds in foreign currency.

(ii) Open FCA with licensed onshore banks, licensed offshore banks in Labuan or overseas banks for crediting foreign currency receivables, other than export proceeds, with no limit imposed on the overnight balances.

(iii) Obtain any amount of domestic credit facilities in ringgit.

(iv) Obtain any amount of foreign currency credit facilities from licensed onshore banks and licensed merchant banks in Malaysia, and from any non-resident, provided the OHQ does not on-lend to, or raise the funds on behalf of, any resident.

(v) Invest abroad any amount, including extension of credit facilities to its related companies, to be funded with foreign currency funds or borrowing. It may also convert any amount of ringgit for investment abroad if it does not have domestic credit facilities or up to RM10 million per calendar year if it has domestic credit facilities.

F Immigration Procedures

1.0 PASSPORT AND VISA REQUIREMENT

All persons entering Malaysia must possess valid national passports or other internationally recognised travel documents valid for travel to Malaysia. These documents must be valid for at least six months beyond the date of entry into Malaysia.

Those with passports not recognised by Malaysia must apply for a document in lieu of the passport as well as a visa issued by Malaysian missions abroad.

Applications for visas can be made at the nearest Malaysian mission abroad. In countries where Malaysian missions have not been established, applications can be made to the nearest British High Commission or Embassy.

Visa Requirements	**Citizens of:**
No visa required	Commonwealth Countries (except India, Bangladesh, Pakistan, Sri Lanka, and Nigeria), Switzerland, Netherlands, San Marino and Liechtenstein
No visa required for social visits not exceeding 30 days	ASEAN countries expert Myanmar
No visa required for social visits not exceeding three months	Albania, Algeria, Argentina, Austria, Bahrain, Belgium, Bosnia Herzegovina, Brazil, Croatia, Cuba, Denmark, Egypt, Finland, France, Germany, Hungary, Iceland, Italy, Japan, Jordan, Kyrgystan, Kuwait, Lebanon, Luxembourg, Morocco, Norway, Omen, Peru, Poland, Qatar, Romania, Saudi Arabia, South Korea, Spain, Sweden, Slovakia, Tunisia, Turkey, Turkmenistan, United Arab Emirates, United States of America, Uruguay and Yemen.

No visa required for visit not exceeding 14 days	Iraq, Libya, Syria, Palestine, Macao (Travel Permit), Portugal (Alien Passport)
No visa required for social visits not exceeding 15 days	Iran
Visa without reference required	India, Bangladesh, Pakistan, Sri Lanka, Bhutan, China, Myanmar, Nepal, Taiwan, Angola, Burkina Faso, Burundi, Cameroon, Central African Republic, Congo Republic, Congo Democratic Republic, Cote d' Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Guinea-Bissau, Liberia, Mali, Mozambique, Niger, Rwanda, Taiwan, Nigeria, and Western Sahara
Visa with reference required	Afghanistan
Prior approval required from the Malaysian government	Israel and Yugoslavia

For countries other than those stated above, no visa is required for visits not exceeding one month.

2.0 ENTRY INTO MALAYSIA

2.1 Passes Issued at Point of Entry

A visitor can obtain a visit pass for the purpose of a social or business visit at the point of entry provided he can satisfy immigration authorities that he has a valid passport and visa (where necessary) which allows him to stay temporarily in Malaysia.

A Visit Pass is issued to visitors for the purpose of a social or/and business visit such as:

- Owners and company representatives entering Malaysia to attend a company meeting or seminar, inspect the company's accounts or to ensure the smooth running of the company
- Investors or businessmen entering to explore business opportunities and investment potential
- Foreign representatives of companies entering to introduce goods for manufacture in Malaysia, but not to engage in direct selling or distribution

- Property owners entering to negotiate, sell or lease properties
- Foreign reporters from mass media agencies entering to cover any event in Malaysia
- Participants in sporting events

These passes cannot be used for employment or for supervising the installation of new machinery or the construction of a factory.

2.2 Passes Issued upon Arrival in Malaysia

Other than applications for entry for the purpose of social or business visits, all applications for passes mentioned below must be made upon arrival in the country.

All such applications must have sponsorship in Malaysia whereby sponsors agree to be responsible for the maintenance and repatriation of the visitors from Malaysia if necessary.

The types of passes are:

(i) Visit Pass (Temporary Employment)

This is issued to persons who enter the country to take up temporary employment for less than 24 months or earn a monthly income of less than RM2,500.

(ii) Employment Pass

This is issued to foreigners who enters the country to take up employment for a minimum period of two years and earn a monthly income of not less than RM2,500.

(iii) Visit Pass (Professional)

This is issued to foreigners who wish to enter the country for the purpose of engaging in short-term contract with any agency.

The categories of foreigners who are eligible are:

- artistes
- those entering for filming
- researchers recognised by the Government of Malaysia
- members of an Internsational Organisation
- volunteers
- invited lecturers/speakers
- those entering for religious purposes
- experts in the installation or maintenance of machines/ computers
- trainees or technical trainees (eg. management trainees in hotels and resorts).

The validity of the pass varies but it does not exceed twelve months at any one time.

Applications should be made before entering Malaysia. All applicants will only be allowed for entry once the pass is approved.

(iv) Dependant's Pass.

This is issued to wives and children of foreigners who have been issued with an employment pass. This pass may be applied for together with the application of an employment pass or after the employment pass is approved. Wives and children of foreigners who enter the country on a visit pass (temporary employment or professional) will be issued a visit pass (social).

(v) Student's Pass.

This is issued to foreigners who enroll in any approved educational institution.

3.0 EMPLOYMENT OF EXPATRIATE PERSONNEL

The Malaysian government is desirous that Malaysians are eventually trained and employed at all levels of employment. Thus, companies are encouraged to train more Malaysians so that the employment pattern at all levels of the organisation will reflect the multi-racial composition of the country.

Notwithstanding this, where there is a shortage of trained Malaysians, foreign companies are allowed to bring in expatriate personnel. In addition, foreign companies are also allowed "key posts", that is, posts that are permanently filled by foreigners.

To further improve Malaysia's investment environment and promote technology transfer and the inflow of foreign skills into Malaysia, the government has further liberalized the policy on the employment of expatriate personnel. Effective form 17 June 2003, the new guidelines on employment of expatriate personnel are as follows:

i. Manufacturing companies with foreign paid-up capital of US$2 million and above:

- Automatic approval is given for up to 10 expatriate posts, including five key posts.
- Expatriate can be employed for up to a maximum of 10 years for executive posts, and five years for non-executive posts.

ii. Manufacturing companies with foreign paid-up capital of more than US$200,000 but less than US$2 million:

- Automatic approval is given for up to five expatriate posts, including at least one key post.
- Expatriates can be employed for up to a maximum 10 years for executive posts, and five years for non-executive posts.

iii. Manufacturing companies with foreign paid-up capital of less than US$200,000 will be considered for both key posts and time posts based on current guidelines. They are:

- Key posts can be considered where the foreign paid-up capital is at least RM500,000. This amount, however, is only a guideline and the number of key posts allowed depends on the merits of each case.
- Time posts can be considered for up to 10 years for executive posts that require professional qualifications and practical experience, and five years for non-executive posts that require technical skills and experience. For these posts, Malaysians must be trained to eventually take over the posts.
- The number of key posts and time posts allowed depends on the merits of each case.

iv. For Malaysian-owned manufacturing companies, automatic approval for the employment of expatriates for technical posts, including R&D posts, will be given as requested.

An expatriate personnel who is transferred from one post to another post within the same company will be required to obtain a new employment pass. His original employment pass will be amended to reflect the change in post. A new expatriate personnel replacing another expatriate personnel must also obtain a fresh employment pass.

All employment passes are valid for the period of time as approved for the post. However, for key posts holders, employment passes will be issued on a 5-year renewable basis, except under circumstances where:

- the validity of the expatriate's passport is less than 5 years;

- the expatriate's employment contract is less than 5 years; or
- the employer requires the services of the expatriate for less than 5 years.

Holders of employment passes will be issued with multiple entry visas valid for the duration of the employment pass.

4.0 APPLYING FOR EXPATRIATE POSTS

Effective from 21 October 2004, all applications for expatriate posts from new and existing companies (including those not involving expansion or diversification) in the manufacturing and related service sectors should be submitted to MIDA. This includes companies required to obtain manufacturing licence as well as companies exempted from the manufacturing licence.

5.0 EMPLOYMENT OF FOREIGN WORKERS

In Malaysia, foreign workers can be employed in the construction, plantation, service (domestic servants, restaurant workers, cleaners, workers in cargo handling, workers in welfare homes, launderettes, island resorts and caddies in golf clubs) and manufacturing sectors.

Applications from companies in the manufacturing sector located in Peninsular Malaysia should be submitted to the Ministry of International Trade and Industry or the Ministry of Home Affairs. While the applications from companies in the other sectors should be submitted to the Immigration and National Registration Division, Ministry of Home Affairs.

Only nationals from the specified countries below are allowed to work in the selected sectors as follows:

Country	Sector/Activity
1. Thailand 2. Cambodia 3. Nepal 4. Myanmar 5. Laos 6. Vietnam 7. Philippines (male)	Manufacturing, services (based on the merits of each case), plantation and construction.

Country	Sector/Activity
8. Turkmenistan 9. Uzbekistan 10. Kazakhstan	Manufacturing, services and construction
11. India	Plantation, cooking (cooks) and fixing of high voltage cable.
12. Indonesia	Manufacturing (female only), plantation and construction services (based on the merits of each case)

Approval is based on the merits of each case and subject to conditions that will be determined from time to time. Applications to employ foreign workers will only be considered when efforts to find qualified local citizens and permanent residents have failed.

An annual levy on foreign workers is imposed. The levy for a foreign worker in the manufacturing, services and construction sectors is RM100 per month while in the domestic help and plantations sectors, the levy is RM30 per month.

G List of Promoted Activities and Products

I GENERAL

List of promoted activities and products which are eligible for consideration of pioneer status and investment tax allowance under the Promotion of Investments Act 1986

1.0. AGRICULTURAL PRODUCTION

(1) Cultivation of tea
(2) Cultivation of fruits
(3) Cultivation of vegetables, tubers or roots
(4) Cultivation of rice or maize
(5) Cultivation of herbs or spices
(6) Cultivation of essential oil crops
(7) Production of planting materials
(8) Cultivation of crops for animal feed
(9) Floriculture
(10) Apiculture
(11) Livestock farming (excluding rearing of chickens, ducks or pigs)
(12) Production of breeder stock
(13) Spawning, breeding and culturing of aquatic products
(14) Off-shore fishing
(15) Cultivation of medicinal plants
*(16) Sericulture
*(17) Cultivation of cocoa
*(18) Cultivation of coconut
*(19) Cultivation of sago palm
*(20) Rearing of chicken and ducks

2.0 PROCESSING OF AGRICULTURAL PRODUCE

(1) Chocolate and chocolate confectionery
(2) Fruits
(3) Vegetables, tubers or roots
(4) Essential oils
(5) Livestock products
(6) Aquatic products
(7) Agricultural waste or agricultural by-products
(8) Aquaculture feed

(9) Plant extracts for pharmaceutical, perfumery, cosmetic or food industries
(10) High fructose syrup
(11) Cocoa and cocoa products
*(12) Illipe products
*(13) Coconut products except copra or crude coconut oil
*(14) Starch products

3.0 FORESTRY AND FORESTRY PRODUCTS

(1) Cultivation of timber, bamboo or cane
(2) Cane products
(3) Bamboo products

4.0 MANUFACTURE OF RUBBER PRODUCTS

(1) Earthmover tyres, agricultural tyres, industrial tyres, commercial vehicle tyres, motorcycle tyres, aircraft tyres or solid tyres
(2) Precured tread liners
(3) Retreading of aircraft tyres
(4) Latex products:
- (a) Surgical gloves
  (b) Safety/special function gloves
  (c) Condoms
  (d) Catheters
  (e) Rubber (elastomeric) specialty coatings
  (f) Rubberised fabrics

(5) Dry rubber products:
- (a) Beltings
  (b) Hoses, pipes and tubings
  (c) Rubber profiles
  (d) Inflatable rubber products
  (e) Industrial and office equipment rollers
  (f) Seals, gaskets, washers, packings and rings
  (g) Anti-vibration, damping and sound insulation products
  (h) Rubber linings
  (i) Rubber floorings
  (j) Rubber moulds
  (k) Modified natural rubber

(6) Reclaimed rubber
(7) Rubber support
(8) Latex products:
- (a) Carpet underlay
  (b) Swimming caps

(c) Balloons
(d) Finger cots
(e) Toys
(f) Latex thread

5.0 MANUFACTURE OF PALM AND PALM KERNEL OIL PRODUCTS AND THEIR DERIVATIVES

(1) Oleochemicals or oleochemical derivatives or preparations
(2) Margarine, vanaspati, shortening or other manufactured fat products
(3) Fatty acid distillate derivatives
(4) Cocoa butter replacers, cocoa butter substitutes,cocoa butter equivalent, palm oil mid-fraction or special olein
*(5) Crude palm kernel oil or palm kernel meal
*(6) Refining of palm oil or palm kernel oil

6.0 MANUFACTURE OF CHEMICALS AND PETROCHEMICALS

(1) Chemical derivatives from organic or inorganic sources
(2) Fine chemicals
(3) Basic manufacture of pesticides
(4) Petrochemical products
(5) Epoxy encapsulation moulding compounds
(6) Cable compounds (excluding PVC cable compound)
(7) Titanium dioxide pigment
(8) Barium sulphate pigment
(9) Iron dioxide pigment
(10) Metallic pigment
(11) Recycling of chemicals
(12) Anti-tack solutions
(13) Injet inks
*(14) Cleaning preparations, cosmetics or toilet preparations
*(15) Wax products
*(16) Specialised paints or coatings

7.0 MANUFACTURE OF PHARMACEUTICAL AND RELATED PRODUCTS

(1) Pharmaceuticals goods
(2) Clinical diagnostic reagents
(3) Gelatine or gelatine products
(4) Intravenous, dialysis or irrigating solutions
(5) Vaccines
(6) Medicaments

8.0 MANUFACTURE OF WOOD AND WOOD PRODUCTS

(1) Reconstituted wood-based panel boards or products
(2) Wooden solid or other specialised function doors or wooden solid windows
(3) Multi-ply parquet
(4) Wooden furniture or parts
(5) Insulation for cryogenic vessels
*(6) All wooden products except sawn timber, veneer and plain plywood

9.0 MANUFACTURE OF PULP, PAPER AND PAPERBOARD

(1) Pulp
(2) Newsprint
(3) Security paper
(4) Resin impregnated paper and products thereof
(5) Printing and writing paper
(6) Corrugated medium paper, testliner or kraftliner
(7) Kraft paper
(8) Paperboard
(9) Moulded paper
(10) Specialty paper
*(11) All types of paper and paper products from pulp

10.0 MANUFACTURE OF TEXTILES AND TEXTILE PRODUCTS

(1) Natural or man-made fibres
(2) Yarn of natural or man-made fibres
(3) Woven fabrics
(4) Finished knitted fabrics
(5) Finishing of fabrics such as bleaching, dyeing and printing
(6) Knitwear
(7) Skiwear or winter outerwear
(8) Non-woven products
(9) Elastic webbings
(10) Textile hose piping

11.0 MANUFACTURE OF CLAY-BASED, SAND-BASED AND OTHER NON-METALLIC MINERAL PRODUCTS

(1) High alumina or basic refractories
(2) Kiln furniture
(3) Laboratory, chemical or industrial wares
(4) Artware, ornaments or articles for adornment of ceramic or glass
(5) Glassware

(6) High tension electrical glass insulators
(7) Glass components or parts for electrical, electronic or industrial use
(8) Glass fibre in all forms produced from basic raw materials
(9) Finished woven fabrics of glass fibre
(10) Optical glass blanks
(11) Alumino-silicate ceramic fibres
(12) Ceramic components or parts for electrical, electronic or industrial uses
(13) Fritz, zirconium silicate powder, glaze or glaze stains
(14) Silicon dioxide fillers
(15) Rockwool
(16) Synthetic industrial diamonds
(17) Processed ball clay
(18) Articles of pressed or moulded glass as bricks, tiles, slabs, paving blocks, pellets and squares
(19) Tableware
(20) Coated glass
(21) Integrated cement projects
(22) Absorbent mineral clay
(23) Marble and granite products
(24) Gypsum plaster board
(25) Panels, boards, tiles, blocks or similar articles of vegetable fibre, wood fibre, wood shavings or wood wastes, agglomerated with cement, plaster or other mineral binding substance
(26) Quicklime and hydrated lime
*(27) Processed kaolin
*(28) Ceramic wall or floor tiles
*(29) Vitrified clay pipes
*(30) Calcium carbonate powder
*(31) Coated or uncoated talc or barium sulphate powders (average particle size less than 5 microns)
*(32) High grade silica sand or powder
*(33) Clay roofing tiles

12.0 MANUFACTURE OF IRON AND STEEL

(1) Blooms or slabs of steel
(2) Shapes or sections of steel of height more than 200 mm
(3) Plates, sheets, coils, hoops or strips of steel
- (a) Hot rolled plates, sheets, coils, hoops or strips
- (b) Cold rolled/cold reduced plates, sheets, coils, hoops or strips

(4) Seamless steel pipes
(5) Seamless high pressure gas cylinders
(6) Steel tyre cord and high pressure reinforced hose wire

(7) Ferromanganese, silicon manganese or ferrosilicon
(8) Electrolytic galvanised steel sheet in coil
*(9) Welded steel pipes or pipe fittings
*(10) Bars or wire rods (except those of mild steel), angles, shapes or sections of all grades of steel either hot-rolled, cold-rolled or cold-finished
*(11) Wires or wire products of iron or steel
*(12) Steel fabricated products

13.0 MANUFACTURE OF NON-FERROUS METALS AND THEIR PRODUCTS

(1) Dressing and smelting of non-ferrous metals other than tin metals
(2) Primary ingots, billets or slabs of non-ferrous metals
(3) Bars, rods, shapes or sections of non-ferrous metals except EC copper rods
(4) Plates, sheets, coils, hoops or strips of non-ferrous metals
(5) Pipes or tubes of non-ferrous metals
(6) Copper clad laminates and products from in-house copper clad laminates
(7) Powder, cream or paste of non-ferrous metals
*(8) Wire or wire products of non-ferrous metals
*(9) Fabricated products of non-ferrous metals

14.0 MANUFACTURE OF MACHINERY AND MACHINERY COMPONENTS

(1) Specialised/process machinery or equipment associated with specific industry including:
- (a) Agricultural machinery or equipment
  (b) Mining or mineral extraction/processing machinery or equipment
  (c) Construction machinery or equipment
  (d) Waste water/sewage treatment equipment
  (e) Industrial sewing machines

(2) Supporting services machinery or equipment including power generating machinery or equipment
(3) Material handling machinery or equipment including elevators or escalators
(4) Hand tools or power tools
(5) Machinery and industrial parts/components including:
- (a) Printing rolls or embossing rolls
  (b) Dicing blades, accessories for silicon wafers or ceramic substrates

(c) Offset printing plates
(d) Industrial seals or seal materials

(6) Machine tools (metalworking, woodworking and others) including welding/soldering equipment
(7) Packaging machinery
(8) Machinery or equipment for the services sector including:
- (a) Fire fighting equipment
(b) Hand labellers

(9) Reconditioning of heavy machinery and equipment
- (a) Automobile air conditioning compressors

(10) Servicing and upgrading of machinery and equipment

15.0 MANUFACTURE OF TRANSPORT EQUIPMENT, COMPONENTS AND ACCESSORIES

(1) Bicycles
(2) Bicycles parts:
- (a) Drive set (chain wheel and crank)
(b) Brake set
(c) Speed change set
(d) Hub

(3) Two-wheeler motorised vehicle 50cc-1000cc
(4) Motor vehicles
(5) Speciality cars
(6) Engines
(7) Engine parts:
- (a) Cylinder block, cylinder head, rocker cover, flywheel or pulley
(b) Crank shaft, connecting rod, cam shaft, rocker, rocker shaft, engine valve, sprocket, piston pin or piston ring
(c) Intake manifold or exhaust manifold
(d) Oil pan, oil pump, oil pump gear shaft, fuel pump, water pump or oil seal
(e) Timing belt, timing chain, carburettor, ignition coil or distributor
(f) Fuel injection mechanism (injector, pump, tubing, valves, regulator, sensors, electronic control modules)
(g) High tension cables
(h) Engine bracket
(i) Magneto
(j) Capacitor discharge unit

(8) Transmissions
(9) Transmission parts:
- (a) Transmission shift lever and fork
(b) Transmission control linkages

(c) Speedometer pinion
(d) Clutch
(e) Torque converter
(f) Drive shaft

(10) Axle, wheel, wheel hub or knuckle
(11) Disc brake, drum brake, brake cylinder, brake master cylinder, brake booster, anti-lock braking mechanism, clutch master cyclinder or clutch operating cyclinder
(12) Steering wheel, steering column, steering gear box, power steering pump, rack tubes for hydraulic/electric power steering and feed pipes for hydraulic power steering, steering linkages, tie rod or constant velocity joints
(13) Stabilizer bar, suspension arm or suspension arm shaft and member
(14) Body panels, chassis frame, fuel tank, window regulator, locks and keys or hinges
(15) Head lights, indicating/signalling lights, meters, gauges, electronic control modules, switches or horns
(16) Weather strips, control cables, speedometer cables, metallic tubings or hoses
(17) Catalytic converter
(18) Vehicle safety air bag
(19) Navigational system
(20) Automotive electronic module/component or sensor
(21) Seat mechanism including seat adjuster or locking mechanism or seat recliner
(22) System integrator:

- (a) Front corner module
  (b) Rear corner module
  (c) Instrument panel module
  (d) Strut and absorbers and spring assembly module
  (e) Bumper assembly
  (f) Front cross member module
  (g) Function integrated door module
  (h) Fuel tank module
  (i) Seat assembly
  (j) Pedal assembly
  (k) Door trim assembly
  (l) Floor console assembly
  (m) Tyre and wheel assembly
  (n) Brake system
  (o) Wiper system
  (p) Exhaust system
  (q) Audio system
  (r) HVAC (Heater Ventilation Air-conditioning system)
  (s) Airbag system
  (t) Power and signal distribution system

(u) Alarm system
(v) Seat belt system
(w) Exterior lighting system
(x) Body in white assembly

(23) Gear
(24) Cooling equipment, air-inlet equipment or exhaust equipment, compressor and expansion valve for automotive air-conditioning
(25) Aerospace industry:
- (a) Manufacture and assembly or aircraft
(b) Manufacture of aircraft equipment, components, accessories or parts thereof
(c) Ground support equipment for aerospace industry

(26) Pleasure crafts, hydrofoils or hovercrafts
(27) Maintenance, repair, overhaul or service of aircraft, aircraft components or accessories or testing and repairing of avionics
(28) Manufacture of train and related equipment:
- (a) Construction or locomotive, rail car
(b) Coach, wagon, bogie
(c) Electric multiple unit and power generating car
(d) Railway signalling and communication system

*(29) Electrical or electronics systems instrumentation
*(30) Shipbuilding
*(31) Shiprepair

16.0 SUPPORTING PRODUCTS/ACTIVITIES

(1) Metal castings
(2) Metal forgings
(3) Metal surface treatment/finishing
(4) Machining
(5) Moulds, tools or dies
(6) Powder metallurgical parts (sintering of metal parts)
(7) Heat treatment
(8) Mould texturing
(9) Irradiation service
(10) Gas sterilisation service
(11) Overhaul, repair, reconditioning, modification or servicing and testing of turbine engines, components or sub-assemblies
(12) Advanced composite materials
(13) Mould designing
*(14) Metal stamping
*(15) Galvanising, shearing or slitting of metal sheets or other related engineering services

17.0 MANUFACTURE OF ELECTRICAL AND ELECTRONIC PRODUCTS AND COMPONENTS AND PARTS THEREOF

(1) Digital television receivers

(2) Digital television receiver parts:

- (a) Cathode ray tubes
  (b) Electron guns
  (c) Polished glass panels or glass funnels for colour picture tubes

(3) Digital audio video recorders/players and parts:

- (a) Digital audio recorders/players
  (b) Digital tape mechanisms
  (c) Digital disk mechanisms
  (d) Optical pick-up units
  (e) Magnetic heads

(4) Computer, parts or computer peripherals:

- (a) Computers (excluding detached peripherals not manufactured in-house)
  (b) Monitors
  (c) Computer printers (including printer mechanism)
  (d) Printer heads
  (e) Computer scanners
  (f) Drive units
  (g) Head gimbal assemblies/head carriage assemblies
  (h) Headstack assemblies
  (i) Computer magnetic heads
  (j) Data storage media
  (k) Voice coil motors
  (l) Actuators
  (m) Electronic games equipment including photo-detector joysticks
  (n) Disk substrates or disk blanks
  (o) Re-manufacturing of computer drives

(5) Electronic components:

- (a) Quartz crystals
  (b) Motors
  (c) Printed circuit boards (excluding rigid single sided circuit boards)
  (d) Cables or wires for electronic devices including flat cables
  (e) Hermetic seals
  (f) Electrical/electronic components moulded with magnets
  (g) Heat shrinkable cable joints and terminations
  (h) Thermistors
  (i) Connectors with or without wires or cables
  (j) Bonding wires

(k) Lead-frames
(l) Magnets or ferrite cores
(m) Displays-electroluminescent, plasma or liquid crystal
(n) Membrane switches
(o) Surface mount components
(p) Optical fibres or optical fibre products
(q) SMT chipholders on lead-frames
(r) Solar cells
(s) Magnetron
(t) Fabrication of light emitting diodes (LED)

(6) Recorded and unrecorded media:
- (a) Compact discs
(b) Magnetic webs or pancakes

(7) Electronic machines and equipment/devices:
- (a) Teller machine
(b) Office equipment
(c) Alarm equipment/systems or devices
(d) Ultrasonic cleaners
(e) Computing scales
(f) Cash registers
(g) Demagnetisers
(h) Industrial controllers
(i) Computer Aided Design (CAD), Computer Aided Manufacturing (CAM) or Computer Aided Engineering (CAE) equipment
(j) Robots or robotics
(k) Multimedia integrated controller

(8) Wafer fabrication:
- (a) Semiconductor wafer fabrication
(b) Reclaimed silicon wafers

(9) Electrical products:
- (a) Uninterruptible power supplies
(b) Batteries excluding manganese dioxide, dry cells and lead acid batteries
(c) Solar panels
(d) Discharge tubes

(10) Telecommunication:
- (a) Telecommunication equipment including multi feature mobile phones but excluding fixed line telephone sets
(b) Antennae for communication equipment
(c) Voice/pattern/vision recognition or synthesis equipment
(d) Data terminal displays
(e) Global positioning system

(f) Electronic navigational aid
(g) Electronic tracking aid

(11) Software development and production
(12) Discharge tubes and products thereof
(13) Air sterilizer
*(14) Transformers or coils
*(15) Automatic gate mechanisms
*(16) Consumer electronic products; parts, sub-assemblies or accessories thereof
*(17) Industrial electronic products; parts, sub-assemblies and accessories thereof
*(18) Electrical household appliances and parts thereof
*(19) Electrical industrial equipment or parts thereof

18.0 MANUFACTURE OF PROFESSIONAL, MEDICAL, SCIENTIFIC AND MEASURING DEVICES/PARTS

(1) Medical, surgical, dental or veterinary devices/equipment
(2) Gauges or measuring apparatus
(3) Surveying, hydrographic, navigational, meteorological, hydrological or geophysical instruments
(4) Testing equipment
(5) Clocks or watches
(6) Stainless steel cannulae or tubes for needles

19.0 MANUFACTURE OF PHOTOGRAPHIC, CINEMATOGRAPHIC, VIDEO AND OPTICAL GOODS

(1) Cameras
(2) Lenses
(3) Binoculars, telescopes, magnifying glasses or microscopes
(4) Cinematographic or video equipment

20.0 MANUFACTURE OF PLASTIC PRODUCTS

(1) Inflatable plastic products
(2) Specialised plastic films/sheets
(3) Geosystems products [Cellular Confinement System (CCS) and Porous Pavement System (PPS)]
(4) Plastic products for engineering use
(5) Precision engineering plastic products
(6) Multiwall pipes
*(7) Expanded polystyrene foam

21.0 MISCELLANEOUS

(1) Musical instruments
(2) Furniture hardware
(3) Souvenirs, handicrafts or giftware
(4) Electronic Toys
(5) Sports goods or equipment
(6) Spectacles or spectacle frames
(7) Accessories for the textile industry
(8) Cutlery
(9) Lock sets or lock cylinder mechanisms
(10) Jewellery of precious metal
(11) Costume jewellery
(12) Designing and printing of decorative surfaces for commercial applications
(13) Integrated exhibits
(14) Microbials and probiotics
(15) Bank notes
(16) Thermi containers and parts thereof
(17) Biodegnadable disposable packaging and household wares
(18) Fall protection equipment
(19) Ball pentips
(20) Bio-ceramic embedded textile products
*(21) Toys (excluding electronic toys)
*(22) Art and design apparatus - all types
*(23) Enamelled household ware
*(24) Cooker or barbeque sets

22.0 HOTEL BUSINESS AND TOURIST INDUSTRY

(1) Establishment of medium and low-cost hotels (up to a three-star hotel)
(2) Expansion/modernisation of existing hotels
(3) Establishment of tourist projects
(4) Expansion /modernisation of tourist projects
(5) Establishment of recreational camps
(6) Establishment of convention centres

23.0 FILM INDUSTRY

(1) Film or video production
(2) Post production for film or video

II HIGH TECHNOLOGY COMPANIES

List of promoted activities and products for high technology companies under the Promotion of Investments Act 1986

1.0 ADVANCED ELECTRONICS

(1) Design, development and manufacture of:
- (a) Computer or peripherals
  (b) Microprocessor application

(2) Development and production of communication equipment

(3) Design and production of integrated circuits (IC)

(4) Development and production of catchode ray tubes and advance displays

(5) Design, development and manufacturer of printer heads, head gimbals/head carriages, headstacks, magnetic heads, voice coil motors and actuators

(6) Development and production of advanced connectors

(7) Development and manufacturing of high density interconnect printed circuit boards (PCB) excluding rigid single-sided PCB

2.0 EQUIPMENT/ INSTRUMENTATION

(1) Design, development and manufacture of:
  (a) Medical equipment
  (b) Medical implant or devices
  (c) Scientific equipment
  (d) Cyclonic separation equipment

(2) Development and production of high pressure water cutting equipment

3.0 BIOTECHNOLOGY

(1) Development, testing and production of:
- (a) Pharmaceuticals
  (b) Fine chemicals
  (c) Food or food ingredients
  (d) Feed or feed supplements
  (e) Biodiagnostics

(2) Development and production of:
- (a) Cell cultures
  (b) Biopolymers
  (c) Biomaterials

(3) Development and production of biotechnology processes for waste treatment

4.0 AUTOMATION AND FLEXIBLE MANUFACTURING SYSTEMS

(1) Development and production of:
- (a) Computer process control systems/equipment
  (b) Process instrumentation
  (c) Robotic equipment
  (d) Computer numerical control (CNC) machine tools

5.0 ELECTRO-OPTICS AND NON-LINEAR OPTICS

(1) Development and production of:
- (a) Optical lenses
  (b) Laser application equipment
  (c) Fibre-optic communication equipment

(2) Design, development and production of cameras including lens units, lens barrel units and view finder units

6.0 ADVANCED MATERIALS

(1) Application or production of:
- (a) Polymers or biopolymers
  (b) Superconductors
  (c) Fine ceramics or advanced ceramics
  (d) High strength composites

7.0 OPTOELECTRONICS

(1) Development and production of:
- (a) Optoelectronics systems components
  (b) Optical systems components
  (c) Photo-couplers
  (d) Semiconductors lasers

8.0 SOFTWARE ENGINEERING

(1) Development and production of:
- (a) Neural networks
  (b) Pattern recognition systems
  (c) Machine vision
  (d) Fuzzy logic systems

9.0 ALTERNATIVE ENERGY SOURCES

(1) Development and production of:
- (a) Fuel cells
  (b) Polymer batteries
  (c) Solar cells
  (d) Renewable energy

10.0 AEROSPACE

(1) Design or development and production or assembly of:
- (a) Aircraft
  (b) Aircraft equipment, components, accessories or parts thereof

(2) Modification and conversion of aircraft

(3) Refurbishment or re-manufacture of aircraft equipment, components, accessories or parts of aircraft

11.0 FOOD PRODUCTION AND FOOD PROCESSING

(1) Food production using emerging technologies and advanced farming systems

(2) Development, testing and manufacturing of food products using emerging technologies and advanced manufacturing systems

12.0 ENGINEERING SUPPORT INDUSTRIES/SERVICES

(1) Design or development and manufacture of:
a. trim and form dies
b. semiconductor cavity/encapsulation moulds
c. suspension tooling for hard disk drive parts
d. progressive tooling for lead frames
e. fibre optic connection tooling

(2) Design, development and manufacture of advanced tooling and equipment for the production of precision components/parts for industrial applications

(3) Development and production of precision machined and die cast parts using advanced manufacturing systems

13.0 WOOD PROCESSING

(1) Development, testing and processing of engineered wood products

III SMALL-SCALE COMPANIES

List of promoted activities and products for small scale companies for consideration of pioneer status under the Promotion of Investments Act 1986

1.0 PROCESSING OF AGRICULTURAL PRODUCE

(1) Cocoa and cocoa products
(2) Coffee
(3) Tea
(4) Coconut products except copra and crude coconut oil
(5) Fruits
(6) Vegetables
(7) Cereal Products
(8) Starch and proteins
(9) Herbs or spices
(10) Essential oils
(11) Fodder or other animal feed ingredients
(12) Flowers or ornamental foliages
(13) Honey
(14) Meat
(15) Livestock products
(16) Aquatic products, including seaweed
(17) Agricultural waste and by-products
(18) Aquaculture feed
(19) Sugar and confectionary products

2.0 FORESTRY PRODUCTS

(1) Rattan products (excluding rattan poles, peel and splits)
(2) Bamboo products
(3) Other forestry products

3.0 MANUFACTURE OF RUBBER PRODUCTS

(1) Moulded rubber products
(2) Extruded rubber products
(3) General rubber goods
(4) Foam rubber products
(5) Inflatable rubber products
(6) Engineering components of rubber (e.g. building mounts and anti-vibration mounts)
(7) Rubber adhesive / rubber sealant

4.0 MANUFACTURE OF PALM OIL AND PALM KERNEL OIL PRODUCTS AND THEIR DERIVATIVES

(1) Margarine, vanaspati, shortening and other manufactured fat products

5.0 MANUFACTURE OF CHEMICALS AND PHARMACEUTICALS

(1) Pigment preparation and dispersion
(2) Desiccant

6.0 MANUFACTURE OF WOOD AND WOOD PRODUCTS

(1) Fancy plywood, prefinished and printed plywood
(2) Timber mouldings
(3) Builders carpentry and joinery
(4) Products derived from utilisation of wood waste (eg. activated charcoal, wooden briquettes, wood wool)
(5) Wooden household and office articles
(6) Wooden furniture parts and components

7.0 MANUFACTURE OF TEXTILES AND TEXTILE PRODUCTS

(1) Batik
(2) Accessories for the textile industry

8.0 MANUFACTURE OF CLAY-BASED AND SAND-BASED PRODUCTS AND OTHER NON-METALLIC MINERAL PRODUCTS

(1) Artware, ornaments and articles of ceramic and glass
(2) Glass fittings for lighting purposes
(3) Panels, boards, tiles, blocks and similar articles of vegetable fibre, straw, wood shavings or wood wastes, agglomerated with cement plaster or with other mineral binding substances
(4) Abrasive products for grinding, polishing and sharpening

9.0 MANUFACTURE OF IRON AND STEEL PRODUCTS

(1) Wire and wire products of iron and steel
(2) Steel fabricated products

10.0 MANUFACTURE OF NON-FERROUS METALS AND THEIR PRODUCTS

(1) Wire and wire products of non-ferrous metals

11.0 SUPPORTING PRODUCTS AND SERVICES

(1) Metal forgings
(2) Machining
(3) Stamping
(4) Plating
(5) Moulds, tools and dies
(6) Industrial seals and seal materials

12.0 MANUFACTURE OF HANDTOOLS

(1) Handtools, all types (such as axes, pliers, spanners, screwdrivers, wrenches, hammers, pincers, riveting tools and other handtools)

13.0 MANUFACTURE OF MOTOR VEHICLES, COMPONENTS AND ACCESSORIES

(1) All automotive components and accessories

14.0 ASSEMBLY AND MANUFACTURE OF ELECTRICAL AND ELECTRONIC PRODUCTS AND COMPONENTS AND PARTS THEREOF

(1) Decorative lights
(2) Antennae
(3) Capacitors
(4) Disc card players
(5) Energy-saving lamps
(6) Resistors
(7) Power supplies
(8) Invertors
(9) Key pads and key switches
(10) Printed Circuit Board Assemblies using surface mount technology
(11) Electronic ballast
(12) Three phase electrical accessories or devices
(13) Telecommunication equipment, computer/computer peripherals and industrial electronic equipment
(14) Electrical security equipment/devices, components and parts thereof

15.0 MANUFACTURE OF KITCHENWARE

(1) Kitchenware, all types
(2) Tableware

16.0 MANUFACTURE OF FURNITURE

(1) Furniture

17.0 MANUFACTURE OF TOYS

(1) Toys

18.0 MANUFACTURE OF SOUVENIRS

(1) Souvenirs, handicrafts, giftwares and decorative wares

19.0 MANUFACTURE OF SPORTS GOODS AND EQUIPMENT

(1) Sports goods and equipment, all types

20.0 MANUFACTURE OF JEWELLERY AND RELATED PRODUCTS

(1) Jewellery
(2) Processed Gems

21.0 MISCELLANEOUS

(1) Wax products

22.0 MANUFACTURE OF PLASTIC PRODUCTS

(1) Decorative panels and ornaments of plastic
(2) Plastic coil mats
(3) Bathroom accessories and kitchen accessories

IV INDUSTRIAL LINKAGE PROGRAMME (ILP)

List of promoted products and activities in an Industrial Linkage Programme (ILP) for consideration of pioneer status or investment tax allowance under the Promotion of Investments Act 1986

1.0 MANUFACTURE OF RUBBER PRODUCTS

(1) Moulded rubber products
(2) Conveyor belts, transmission belts, V-type belts or rubber beltings

2.0 MANUFACTURE OF PLASTIC PRODUCTS

(1) Plastic products for engineering use

3.0 MANUFACTURE OF CLAY-BASED, SAND-BASED AND OTHER NON-METALLIC MINERAL PRODUCTS

(1) Ceramic components or parts for electrical, electronic or industrial uses
(2) Glass envelopes
(3) Glass fittings
(4) Advanced composite materials or products

4.0 MANUFACTURE OF TEXTILES AND TEXTILE PRODUCTS

(1) Elastic webbings

5.0 MANUFACTURE OF IRON AND STEEL

(1) Wire or wire products of irons and steel
(2) Steel fabricated products

6.0 MANUFACTURE OF NON-FERROUS METALS AND THEIR PRODUCTS

(1) Copper clad laminates and products thereof
(2) Wire or wire products of non-ferrous metals
(3) Fabricated products of non-ferrous metals

7.0 SUPPORTING PRODUCTS/SERVICES

(1) Metal castings
(2) Metal forgings
(3) Plating
(4) Machining

(5) Moulds, tool or dies
(6) Heat treatment
(7) Mould texturing
(8) Metal stamping
(9) Industrial seals or seal materials
(10) Powder metallurgical parts (sintering of metal parts)
(11) Maintenance, repair, overhaul, modification, servicing or testing of turbine engines, components or sub-assemblies
(12) Maintenance, repair, overhaul, modification, servicing or testing of aircraft, aircraft components or accessories
(13) Maintenance, repair, overhaul, modification, servicing or testing of ship components or accessories

8.0 MANUFACTURE OF TRANSPORT EQUIPMENT, COMPONENTS AND ACCESSORIES

(1) Parts and components for bicycles or tricycles
(2) Parts and components for pleasure crafts, hydrofoils or hovercrafts
(3) Parts, components or accessories for motor vehicles
(4) Aircraft equipment, components, accessories or parts thereof

9.0 MANUFACTURE OF MACHINERY AND MACHINERY COMPONENTS

(1) Machinery components

10.0 MANUFACTURE OF ELECTRICAL AND ELECTRONIC PRODUCTS AND COMPONENTS AND PARTS THEREOF

(1) Computer peripherals:
   a. Drive units
   b. Keyboards
(2) Alarm equipment/system or devices
(3) Parts, sub-assemblies or accessories of consumer or industrial electronic products

V MANUFACTURING RELATED SERVICES

(1) Operational Headquarters
(2) Regional Distribution Centres
(3) International Procurement Centres
(4) Regional Offices
(5) Representative Offices
(6) Research and development (R&D)
(7) Design and phototyping
(8) Technical or vocational training
(9) Integrated logistis services
(10) Integrated market support services
(11) Integrated centralised utility facilities
(12) Total chemical management system
(13) Cold chain facilities and services for food products
(14) Environmental management
    (a) Energy conservation/efficiency services#
    (b) Energy generation activities, using renewable energy sources (biomass, hydro power, solar power)#
    (c) Storage, treatment and disposal of toxic and hazardous waste
    (d) Waste recycling activities
        - agricultural waste or agricultural by-products
        - non-toxic wastes

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* *Additional promoted activities and products for promoted areas, (other than the Federal Territory of Labuan) i.e. Sabah, Sarawak, Kelantan, Terengganu, Pahang and the district of Mersing in Johor.*

Note: For the Federal Territory of Labuan, only the hotel business and tourist industry will qualify for the consideration of incentive gazetted for the promoted areas.

\# *Eligible for all applications received until 31 December 2005*

H Useful Addresses

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MALAYSIAN INDUSTRIAL DEVELOPMENT AUTHORITY (MIDA)

1.0 MIDA HEADQUARTERS

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2.0 MIDA STATE OFFICES

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Malaysian Trade Commissioner
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MARKETING COMMUNICATIONS
GROUP BUSINESS DEVELOPMENT
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Note : *For updates on list of promoted activities and products, visit* MIDA's *web site at http://www.mida.gov.my*
Source : *Malaysian Industrial Development Authority* (MIDA) *Malaysia - Investment in the Manufacturing sector policies, Incentives and Facilities*
Issue Date : *April* 2005
(*Useful Addresses Last Updated* : *June* 2006)

APPENDIX

LAWS OF MALAYSIA

Act 644

FINANCE ACT 2005

Date of Royal Assent	…	30 December 2005
Date of publication in the *Gazette* … … …		31 December 2005

LAWS OF MALAYSIA

Act 644

FINANCE ACT 2005

ARRANGEMENT OF SECTIONS

Section

Finance

CHAPTER IV

AMENDMENTS TO THE STAMP ACT 1949

Section

CHAPTER V

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

CHAPTER VI

AMENDMENT TO THE LABUAN OFFSHORE BUSINESS ACTIVITY TAX ACT 1990

LAWS OF MALAYSIA

Act 644

FINANCE ACT 2005

An Act to amend the Income Tax Act 1967, the Real Property Gains Tax Act 1976, the Stamp Act 1949, the Petroleum (Income Tax) Act 1967 and the Labuan Offshore Business Activity Tax Act 1990.

[ ]

ENACTED by the Parliament of Malaysia as follows:

CHAPTER I

PRELIMINARY

Short title

1. This Act may be cited as the Finance Act 2005.

Amendment of Acts

2. The Income Tax Act 1967 [*Act 53*], the Real Property Gains Tax Act 1976 [*Act 169*], the Stamp Act 1949 [*Act 378*], the Petroleum (Income Tax) Act 1967 [*Act 543*] and the Labuan Offshore Business Activity Tax Act 1990 [*Act 445*] are amended in the manner specified in Chapters II, III, IV, V and VI respectively.

CHAPTER II

AMENDMENTS TO THE INCOME TAX ACT 1967

Commencement of amendments to the Income Tax Act 1967

3. (1) Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 24, 32, 33, 34, 35, 36 and 37 have effect for the year of assessment 2006 and subsequent years of assessment.

(2) Sections 23 and 30 come into operation on 1 January 2006.

(3) Section 25 is deemed to have come into operation on 1 October 2005.

Amendment of section 19

4. The Income Tax Act 1967, which is referred to as the "principal Act" in this Chapter, is amended in subsection 19(5) by deleting the words ", 4A".

Amendment of section 25

5. Section 25 of the principal Act is amended—

(a) in subsection (1), by substituting for the word "Where" the words "Subject to subsection (1A), where"; and

(b) by inserting after subsection (1) the following subsection:

"(1A) The gross income from an employment in respect of any right to acquire shares in a company of the kind to which paragraph 13(1)*(a)* applies, shall where the right is exercised, assigned, released or acquired in the relevant period be treated as gross income of the relevant person for that relevant period.".

Amendment of section 32

6. Section 32 of the principal Act is amended by inserting after subsection (1) the following subsection:

"(1A)*(a)* Where in the relevant period a relevant person acquired any right to acquire shares in a company of the kind to which paragraph 13(1)*(a)* applies, under his name or in the name of his nominee or agent, the amount in respect thereof to be included in his gross income from the employment shall be—

(i) the market value of the shares where the right shall be exercised, assigned, released or acquired on a specified date or where the right shall be exercised, assigned, released or acquired within a specified period, the first day of that period; or

(ii) the market value of the shares on the date of the exercise, assignment, release or acquisition of the right,

whichever is the lower less the amount paid for the shares.

(b) In this subsection, "market value" means—

(i) in the case of a company listed on Bursa Malaysia, the average price of the shares which is ascertained by averaging the highest and the lowest price of the shares for the day; or

(ii) in any other case, the net asset value of the shares for the day.".

Amendment of section 39

7. Paragraph 39(1)*(e)* of the principal Act is amended—

(a) by inserting the word "or" at the end of subparagraph (ii);

(b) by substituting for the words "; or" at the end of subparagraph (iii) a full stop; and

(c) by deleting subparagraph (iv).

Amendment of section 43

8. Subsection 43(1) of the principal Act is amended—

(a) by substituting for the words "The aggregate" the words "Subject to this Act, the aggregate"; and

(b) in paragraph *(c)*, by deleting the words "or 4A".

Amendment of section 44

9. Section 44 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph *(b)*, by substituting for the words ", 4A, 4B or 4C" the words "or 4B";

(ii) in paragraph *(c)*, by deleting the word "and" at the end of that paragraph;

(iii) in paragraph *(d)*—

(A) by substituting for the word "thereafter" the word "next"; and

(B) by substituting for the full stop at the end of that paragraph the words "; and"; and

(iv) by inserting after paragraph *(d)* the following paragraph:

"*(e)* thereafter, by any deduction falling to be so made pursuant to section 44A.";

(b) by inserting after subsection (5) the following subsections:

"(5A) The amount ascertained under subsection (4) or (5) for any relevant year in respect of a company shall be disregarded for the purposes of section 43 unless the Director General is satisfied that the shareholders of that company on the last day of the basis period for that relevant year in which such amount is ascertained were substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which such amount would otherwise be deductible under that section and such amount disregarded shall not be allowed as a deduction in subsequent years of assessment.

(5B) For the purpose of subsection (5A)—

(a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates—

(i) more than fifty per cent of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same persons; and

(ii) more than fifty per cent of the nominal value of the allotted shares in respect of ordinary share in the company is held by or on behalf of the same persons; and

(b) shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company.

(5C) In subsection (5B), "ordinary share" means any share other than a share which carries only a right to any dividend which is of—

(a) a fixed amount or at a fixed rate per cent of the nominal value of the shares; or

(b) a fixed rate per cent of the profits of the company.

(5D) Where there is a substantial change in the shareholders of a company referred to in subsection (5A), the Minister may under special circumstances exempt that company from the provisions of that subsection."; and

(c) in subsection (8), by substituting for the words "and in respect of contributions to public libraries" the words ", to public libraries".

Special provision relating to section 44

10. (1) Notwithstanding the provisions of section 43 of the principal Act and subsection 44(5A) of the principal Act as introduced by section 9 of this Act, any amount ascertained under subsection 44(4) or (5) of the principal Act in respect of a company for any year of assessment preceding the year of assessment 2006 shall be disregarded for the purpose of section 43 of the principal Act unless the Director General is satisfied that the shareholders of that company on the last day of the basis period for the year of assessment 2005 were substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which such amount would otherwise be deductible under section 43 of the principal Act and such amount disregarded shall not be allowed as a deduction in subsequent years of assessment.

(2) For the purpose of subsection (1)—

(a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates—

(i) more than fifty per cent of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same persons; and

(ii) more than fifty per cent of the nominal value of the allotted shares in respect of ordinary share in the company is held by or on behalf of the same persons;

(b) shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company; and

(c) where the basis period of a company for the year of assessment 2005 ends on or after 1 October 2005, the last day of the basis period for that company for the year of assessment 2005 shall be deemed to be 30 September 2005.

(3) Where there is a substantial change in the shareholders of a company referred to in subsection (1), the Minister may under special circumstances exempt that company from the provisions of that subsection.

(4) In this section, "ordinary share" has the same meaning assigned to it under subsection 44(5C) of the principal Act.

New section 44A

11. The principal Act is amended by inserting after section 44 the following section:

"Group relief for companies

(1) Subject to this section, a company (referred to in this section as a "surrendering company") may surrender not more than fifty per cent of its adjusted loss in the basis period of a year of assessment to one or more related companies (referred to in this section as a "claimant company"):

Provided that the surrendering company and the claimant company shall be resident in the basis year for that year of assessment and incorporated in Malaysia.

(2) Subsection (1) shall apply if for any year of assessment—

(a) the surrendering company and the claimant company—

(i) are related companies throughout the basis period for that year of assessment and the twelve months period immediately preceding that basis period;

(ii) have paid-up capital in respect of ordinary share of more than two million five hundred thousand ringgit at the beginning of the basis period for that year of assessment;

(iii) have twelve months basis period ending on the same day;

(iv) make an irrevocable election to surrender or claim an amount of adjusted loss in the return furnished for that year of assessment under section 77A; and

(v) are subject to tax at the appropriate rate as specified in paragraph 2 of Part I of Schedule 1; and

(b) the claimant company has a defined aggregate income for that year of assessment.

(3) For the purpose of this section, a surrendering company and claimant company are related companies if at least—

(a) seventy per cent of the paid-up capital in respect of ordinary shares of the surrendering company is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the claimant company; or

(b) seventy per cent of the paid-up capital in respect of ordinary shares of the claimant company is directly or indirectly (through the medium of other companies resident and incorporated in Malaysia) owned by the surrendering company; or

(c) seventy per cent of the paid-up capital in respect of ordinary shares of the surrendering company and claimant company are directly or indirectly owned by another company resident and incorporated in Malaysia.

(4) Subject to subsection (5), any amount of adjusted loss surrendered under this section for any year of assessment—

(a) shall be the amount or aggregate amount of the adjusted loss or the excess of that amount of the surrendering company for that year of assessment as ascertained under subsection 44(4) or (5);

(b) shall be allowed to a claimant company as a deduction in ascertaining the total income of the claimant company in accordance with subsection 44(1); and

(c) shall not exceed the defined aggregate income of the claimant company for that year of assessment.

(5) Where the amount of adjusted loss is—

(a) surrendered to more than one claimant company, the adjusted loss shall be fully deducted in accordance with subsection (4) to the first claimant company before any excess of the adjusted loss is surrendered and deducted in accordance with that subsection to the second claimant company and so on; or

(b) claimed by a claimant company from more than one surrendering company, the adjusted loss surrendered from the first surrendering company shall be deducted in accordance with subsection (4) to that claimant company before the adjusted loss is surrendered from the second surrendering company be deducted in accordance with that subsection to that claimant company and so on.

(6) For the purpose of subsection (5), the surrendering company and the claimant company shall ascertain the order of priority in respect of the adjusted loss surrendered or claimed but if that loss cannot be effected in accordance with the order of priority specified by any surrendering company or claimant company the amount of adjusted loss surrendered or claimed shall be dealt with in such manner as the Director General thinks reasonable and proper.

(7) Notwithstanding that a company to which subsection (3) applies, owns at least seventy per cent of the paid-up capital in the other company, it shall not be treated to have satisfied that subsection unless additionally in the year of assessment the first mentioned company is beneficially entitled to at least seventy per cent of—

(a) any residual profits of the other company, available for distribution to that other company's equity holders; and

(b) any residual assets of the other company, available for distribution to that other company's equity holders on a winding up.

(8) Notwithstanding any other provision of this section, where—

(a) a claimant company has made an election under subsection (2), that company shall not in that year elect to surrender its adjusted loss to any other claimant company; or

(b) a surrendering company has made an election under subsection (2), that company shall not in that year elect to claim any adjusted loss from any other surrendering company.

(9) Where—

(a) in the basis year for a year of assessment the Director General discovers that the adjusted loss as mentioned in subsection (4) ought not to have been deducted in arriving at the total income of the claimant company, the Director General may in that year or within six years after its expiration make an assessment or additional assessment in respect of that company in order to make good any loss of tax; or

(b) the surrendering company gives an incorrect information in the return furnished under section 77A in respect of the amount of adjusted loss surrendered, the Director General may require the surrendering company to pay a penalty equal to the amount of tax which had or would have been undercharged by the claimant company in consequence of the incorrect information.

(10) The provisions of this section shall not apply to a company for a basis period for a year of assessment where the period during which that company—

(a) is a pioneer company or has been granted approval for investment tax allowance under the Promotion of Investments Act 1986;

(b) is exempt from tax on its income under section 54A, paragraph 127(3)*(b)* or subsection 127(3A);

(c) has made a claim for a reinvestment allowance under Schedule 7A;

(d) has made a claim for deduction in respect of an approved food production project under the Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2001;

(e) has made a claim for deduction under the Income Tax (Deduction For Cost of Acquisition of Proprietary Rights) Rules 2002;

(f) has been granted a deduction under the Income Tax (Deduction For Cost of Acquisition of a Foreign Owned Company) Rules 2003; or

(g) has made a claim for deduction under any rules made under section 154 and those rules provide that this section shall not apply to that company.

(11) For the avoidance of doubt—

(a) the amount of adjusted loss surrendered under this section shall be disregarded for the purpose of ascertaining the aggregate income of the surrendering company under section 43; and

(b) the provisions of this Act shall apply to any adjusted loss of the surrendering company which is not surrendered under this section.

(12) In this section—

"commercial loan" means any borrowing which entitles the creditor to any return which is of only—

(a) a fixed amount or at a fixed rate per cent of the amount of the borrowing; or

(b) of a fixed rate per cent of the profits of the company;

"defined aggregate income", in relation to a year of assessment, means the aggregate income of a claimant company for that year reduced by a deduction made pursuant to paragraphs 44(1)*(a)*, *(b)*, *(c)* and *(d)*;

"equity holder" means any holder of ordinary share in the claimant or surrendering company or any creditor of that company in respect of any non-commercial loan;

"non-commercial loan" means any borrowing other than a commercial loan;

"ordinary share" means any share other than a share which carries only a right to any dividend which is of—

(a) a fixed amount or at a fixed rate per cent of the nominal value of the shares; or

(b) a fixed rate per cent of the profits of the company;

"residual assets" means net assets of the claimant or surrendering company after distribution made to—

(a) creditors of that company in respect of commercial loans; and

(b) holders of shares other than ordinary share,

and where that company has no residual asset, a notional amount of one hundred ringgit is deemed to be the residual assets of the company;

"residual profits" means profits of the claimant or surrendering company after deducting any dividend which is of—

(a) a fixed amount or at a fixed rate per cent of the nominal value of the shares of that company; or

(b) a fixed rate per cent of the profits of that company,

but before deducting any return due to any non-commercial loan creditor which is not of—

(i) a fixed amount or at a fixed rate per cent of the amount of the borrowing; or

(ii) a fixed rate per cent of the profits of that company,

and where that company has no residual profit, a notional amount of one hundred ringgit is deemed to be the residual profits of that company.".

Amendment of section 45A

12. Section 45A of the principal Act is amended—

(a) in paragraph *(a)*, by substituting for the words "total income; or" the words "source of income;";

(b) by substituting for paragraph *(b)* the following paragraph:

"*(b)* the husband has no total income which can be aggregated with that of his wife; or"; and

(c) by inserting after paragraph *(b)* the following paragraph:

"*(c)* an election has been made by the husband under paragraph 45(2)*(b)*,".

Amendment of section 46

13. Subsection 46(1) of the principal Act is amended by substituting for paragraph (f) the following paragraph:

"(f) an amount limited to a maximum of five thousand ringgit on fees expended in that basis year by that individual on himself for any course of study up to tertiary level in any institution or professional body in Malaysia recognized by the Government or approved by the Minister, as the case may be, undertaken for the purpose of acquiring law, accounting, technical, vocational, industrial, scientific or technological skills or qualifications;".

Amendment of section 48

14. Section 48 of the principal Act is amended—

(a) by substituting for subsection (3) the following subsection:

"(3)*(a)* Where for a year of assessment any individual is entitled under paragraph (1)*(b)*, *(c)* or *(d)* to a deduction specified under paragraph (2)*(a)* or *(b)*, as the case may be, in respect of a child over the age of eighteen years and the child is receiving full-time instruction at a university, college or other establishment (similar to a university or college) of higher education, or is serving under articles or indentures with a view to qualifying in a trade or profession, then there shall be allowed—

(i) in the case where that individual is entitled under paragraph (1)*(b)* or *(c)* to a deduction, in substitution for deduction specified under paragraph (2)*(a)*, a deduction of four times of the amount of deduction specified under that paragraph (2)*(a)*; or

(ii) in the case where that individual is entitled under paragraph (1)*(d)* to a deduction, in addition to a deduction specified under paragraph (2)*(b)*, a further deduction of four thousand ringgit:

Provided that in the case of a child who is receiving full-time instruction outside Malaysia, it shall be in respect of an award of degree (including a degree at Master or Doctorate level) or the equivalent of a degree.

(b) For the purpose of paragraph *(a)*, the instruction and educational establishment referred to in that paragraph shall be approved by the relevant government authority."; and

(b) by deleting subsection (6).

Amendment of section 60

15. Section 60 of the principal Act is amended—

(a) in subparagraph (3A)*(b)*(ii), by deleting the words "(subject to any adjustment as the Director General may think fit to make in accordance with the provisions of this Act)"; and

(b) in subparagraph (4A)*(b)*(ii), by deleting the words "(subject to any adjustment as the Director General may think fit to make in accordance with the provisions of this Act)".

Amendment of section 60F

16. Section 60F of the principal Act is amended—

(a) by inserting after subsection (1) the following subsections:

"(1A) Notwithstanding any other provision of this Act, where in any year of assessment income of an investment holding company consists of—

(a) income from the holding of investment, it shall not be treated as income from a source consisting of a business; or

(b) income other than income from the holding of investment, it shall be treated as gains or profits under paragraph 4*(f)*.

(1B) If it is shown that it has been established as between the Director General and the company for any tax purposes that the company is an investment holding company for the basis period for any year of assessment it shall be presumed until the contrary is proved that the company is an investment holding company for the purpose of this Act for the basis period for every subsequent year of assessment.

(1C) This section shall not apply to an investment holding company referred to in section 60FA."; and

(b) in subsection (2), in the definition of "investment holding company", by substituting for the words "wholly in the making of investments and whose income" the words "mainly in the holding of investments and not less than eighty per cent of its gross income (whether exempt or not)".

New section 60FA

17. The principal Act is amended by inserting after section 60F the following section:

"Investment holding company listed on Bursa Malaysia

60FA. (1) The provisions of this section shall apply notwithstanding any other provisions of this Act.

(2) Where an investment holding company is a company resident for the basis year for a year of assessment and listed on the Bursa Malaysia in the basis period for that year of assessment, income of that investment holding company from the holding of investment in that basis period shall be treated as gross income of that investment holding company from a source or sources consisting of a business for that year of assessment.

(3) For the purpose of subsection (2)—

(a) in ascertaining for a year of assessment the adjusted income of an investment holding company from a source referred to in that subsection, any amount of deduction to be made under this Act in arriving at that income shall only be allowed against the gross income from that source but—

(i) where in that year of assessment that source does not produce any income, any deduction in respect of that source shall be disregarded for the purposes of this Act; or

(ii) where that amount of deduction exceeds the gross income from that source for that year of assessment, the excess shall be disregarded for the purposes of this Act; and

(b) in ascertaining for a year of assessment the statutory income of an investment holding company from a source referred to in that subsection, any allowance for that year of assessment falling to be made to that company under Schedule 3 in respect of that source shall only be available against the adjusted income of that person from that source and if by reason of an absence or insufficiency of adjusted income from that source for the basis period for that year of assessment, effect cannot be given or be given in full to any allowance for that year of assessment in relation to that source, that allowance which has not been so made shall not be made to that company for subsequent years of assessment.

(4) If it is shown that it has been established between the Director General and the company for any tax purposes that the company is an investment holding company for the basis period for any year of assessment it shall be presumed until the contrary is proved that the company is an investment holding company for the purpose of this Act for the basis period for every subsequent year of assessment.

(5) In this section, "investment holding company" has the same meaning assigned to it under section 60F.".

Special provision relating to section 60FA

18. Notwithstanding the provision of section 60FA of the principal Act as introduced by section 17 of this Act, the provisions of sections 43 and 44 of the principal Act shall apply to an investment holding company dealt with in section 60FA of the principal Act in respect of its adjusted loss, if any, or allowance which is deemed to be made to that investment holding company under paragraph 75 of Schedule 3 of the principal Act of which adjusted loss or allowance is ascertained prior to the coming into operation of section 17 of this Act.

Amendment of section 75A

19. Section 75A of the principal Act is amended by substituting for subsection (1) the following subsection:

"(1) Notwithstanding anything contrary to this Act or any other written law—

(a) where any tax is due and payable under this Act by a company, any person who is a director of that company during the period in which that tax is liable to be paid by that company; or

(b) where any debt is due and payable from an employer under any rules made pursuant to section 107 and the employer is a company, any person who is a director of that company during the period in which the debt is liable to be paid by that company, shall be jointly and severally liable for such tax or debt, as the case may be, that is due and payable and shall be recoverable under section 106 from that person.".

Amendment of section 91

20. Section 91 of the principal Act is amended by inserting after subsection (3) the following subsection:

"(4) Where in a year of assessment—

(a) any assessment made in respect of a person for any year of assessment has been determined by the court on appeal or review; or

(b) any exemption, relief, remission or allowance granted to a person for any year of assessment pursuant to any provision of this Act or any other written law in respect of income of that person which is subject to tax under this Act has been withdrawn, revoked or cancelled for failing to comply with any condition imposed in granting such exemption, relief, remission or allowance,

the Director General may in the first mentioned year of assessment or within six years after its expiration make an assessment in respect of that person for any year of assessment for the purpose of giving effect to the determination, revocation, withdrawal or cancellation, as the case may be.".

Finance

Amendment of section 95

21. The principal Act is amended by substituting for section 95 the following section:

"Discharge of double assessments

95. Where two or more assessments have been made with respect to a person on the same income for the same year of assessment, the Director General may discharge such of those assessments as need to be discharged in order to ensure that the income is charged to tax only once for that year.".

Amendment of section 107C

22. Section 107C of the principal Act is amended by substituting for subsection (3) the following subsection:

"(3) The estimate of tax payable for a year of assessment shall not be less than eighty-five per cent of the revised estimate of tax payable for the immediately preceding year of assessment or if no revised estimate is furnished, shall not be less than eighty-five per cent of the estimate of tax payable for the immediately preceding year of assessment.".

Amendment of section 111B

23. Subsection 111B(3) of the principal Act is amended by inserting after the words "of this Act" the words "or any other refund or payment required to be paid out of the Fund as provided by any other written law".

Amendment of section 125

24. Subsection 125(2) of the principal Act is amended by substituting for the words "subsection 112(3)" the words "subsection 44A(9), 112(3)".

Amendment of section 127

25. Section 127 of the principal Act is amended—

(a) in paragraph (3)*(b)*, by deleting the words "person or"; and

(b) by inserting after subsection (3) the following subsection:

"(3A) The Minister may, in any particular case exempt any person from all or any of the provision of this Act, either generally or in respect of any income of a particular kind or any class of income of a particular kind.".

Amendment of section 134

26. Section 134 of the principal Act is amended by substituting for subsection (2) the following subsection:

"(2) The Minister shall, after consulting the Director General of Inland Revenue, appoint, by notification in the Gazette—

(a) two or more Deputy Directors General of Inland Revenue;

(b) State Directors, Directors, Deputy Directors, Principal Assistant Directors and Assistant Directors of Inland Revenue;

(c) Head of Revenue Solicitor, Deputy Revenue Solicitors, Senior Revenue Counsels and Revenue Counsels; and

(d) such other officers as may be necessary and expedient for the due administration of this Act, from amongst the employees of the Inland Revenue Board of Malaysia.".

Amendment of section 136

27. Section 136 of the principal Act is amended—

(a) by substituting for subsection (2) the following subsection:

"(2) Any officer appointed under paragraphs 134(2)*(b)* and *(c)*, may exercise any function of the Director General under this Act (not being a function exercisable by statutory order or a function exercisable under section 152) except his function under section 44, subsection 137(1) and section 150.";

(b) by deleting subsections (3) and (4); and

(c) in subsection (5), by substituting for the words "under subsection (4) by Senior Assistant or Assistant Directors of Inland Revenue" the words "under subsection (2) by the appointed officers".

Amendment of section 146

28. Section 146 of the principal Act is amended in subsection (1) by deleting the words ", the Director of Inland Revenue, Sabah, or the Director of Inland Revenue, Sarawak,".

Finance

Amendment of section 147

29. Section 147 of the principal Act is amended by deleting the words ", to the Director of Inland Revenue, Sabah, to the Director of Inland Revenue, Sarawak,".

Amendment of section 153

30. Subsection 153(3) of the principal Act is amended—

(a) by deleting paragraph *(a)*; and

(b) in paragraph *(b)*, by deleting the word "other".

Special provision relating to section 153

31. Notwithstanding the provision of section 153 of the principal Act, where a professional accountant has been authorized under any written law to be an auditor of companies and the authorization is given for a period which begins prior to the coming into operation of the amendment to that section under section 30 of this Act, that professional accountant shall continue to be a tax agent for the purposes of the principal Act until the expiration of that period.

Amendment of Schedule 3

32. Schedule 3 of the principal Act is amended—

(a) by deleting paragraph 2B;

(b) by inserting after paragraph 19 the following paragraph:

"Special allowances for small value assets

19A. (1) Where in the basis period for a year of assessment a person for the purposes of a business of his incurred qualifying plant expenditure in relation to an asset or assets, the value of each asset being not more than one thousand ringgit, and at the end of the basis period he was the owner of the asset and it was in use for the purposes of the business, there shall be made in lieu of the amount of the allowance which would otherwise fall to be made to him under paragraph 10 or 15, an allowance equal to the amount of that expenditure for that year of assessment:

Provided that where the total qualifying plant expenditure in respect of such asset for each year of assessment exceeds the amount of ten thousand ringgit, the total allowance that shall be made in respect of that expenditure under this paragraph shall be equal to such amount.

(2) Allowance under paragraph 10 or 15 in respect of the qualifying plant expenditure referred to in subparagraph (1)—

(a) shall be made a person if that person has not made a claim in respect of that expenditure under that subparagraph; or

(b) shall not be made to that person in respect of that expenditure which has been given allowance under that subparagraph."

(c) in paragraph 75, by substituting for the word "Where" the words "Subject to paragraph 75A, where"; and

(d) by inserting after paragraph 75 the following paragraphs:

"**75A.** Any allowance or aggregate amount of allowances for a year of assessment which has not been so made to a company as ascertained under paragraph 75 shall not be made to that company for the purposes of this Schedule and section 42 unless the Director General is satisfied that the shareholders of that company on the last day of the basis period for the year of assessment in which that allowance or that aggregate amount has not been so made were substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which that allowance or that aggregate amount would otherwise be made to that company under this Schedule and available for the purposes of that section and that allowance or that aggregate amount which but for this paragraph would have been made to the company in a year of assessment shall be disregarded for subsequent years of assessment.

75B. (1) For the purpose of paragraph 75A—

(a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates—

(i) more than fifty per cent of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same person; and

(ii) more than fifty per cent of the nominal value of the allotted shares in respect of ordinary share in the company is held by or on behalf of the same person;

(b) shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company; and

(c) any allowance or aggregate amount of allowances which has not been so made for any year of assessment referred to in that paragraph shall consist of an allowance falling to be made under this Schedule for that year of assessment but shall not include any amount of allowance deemed to have been made for that year of assessment pursuant to paragraph 75.

(2) In this paragraph, "ordinary share" has the same meaning assigned to it under subsection 44(5C).

75C. Where there is a substantial change in the shareholders of a company referred to in paragraph 75A, the Minister may under special circumstances exempt that company from the provisions of paragraph 75A.".

Special provision relating to paragraph 75A

33. (1) Notwithstanding the provisions of section 42 of the principal Act, paragraph 75 of Schedule 3 to the principal Act and paragraph 75A of that Schedule as introduced by section 32 of this Act, any allowance or aggregate amount of allowances which has not been so made to a company as ascertained under paragraph 75 for any year of assessment preceding year of assessment 2006 shall not be made to that company under that Schedule for the purpose of section 42 of the principal Act unless the Director General is satisfied that the shareholders of that company on the last day of the basis period for the year of assessment 2005 were substantially the same as the shareholders of that company on the first day of the basis period for the year of assessment in which that allowance or that aggregate amount would otherwise be made to that company under that Schedule and available for the purpose of section 42 of the principal Act and that allowance or that aggregate amount which but for this subsection would have been made to that company in a year of assessment shall be disregarded for subsequent years of assessment.

(2) For the purpose of subsection (1)—

(a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates—

(i) more than fifty per cent of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same person; and

(ii) more than fifty per cent of the nominal value of the allotted shares in respect of the ordinary shares in the company is held by or on behalf of the same person;

(a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates—

(b) shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company;

(c) the amount of allowance which has not been so made for any year of assessment referred to in that subsection shall consist of an amount of allowance falling to be made under Schedule 3 to the principal Act for that year of assessment but shall not include any amount of allowance deemed to have been made for that year of assessment pursuant to paragraph 75 of that Schedule; and

(d) where the basis period of a company for the year of assessment 2005 ends on or after 1 October 2005, the last day of the basis period for that company for the year of assessment 2005 shall be deemed to be 30 September 2005.

(3) Where there is a substantial change in the shareholders of a company referred to subsection (1), the Minister may under special circumstances exempt that company from the provisions of that subsection.

(4) In this section, "ordinary share" has the same meaning assigned to it under subsection 44(5C) of the principal Act.

Deletion of Schedule 4A

34. The principal Act is amended by deleting Schedule 4A.

Deletion of Schedule 4C

35. The principal Act is amended by deleting Schedule 4C.

Amendment of Schedule 6

36. Schedule 6 of the principal Act is amended—

(a) in paragraph 32, by substituting for the word "six" the word "ten"; and

(b) in paragraph 35, by inserting after the word "Interest" the words "or discount".

Finance

Amendment of Schedule 7A

37. Schedule 7A of the principal Act is amended by inserting after paragraph 6 the following paragraph:

> "**6A.** Where in the case of a business of a person the basis periods for two years of assessment overlap, the period common to those periods shall be deemed for the purposes of this Schedule to fall into the earlier of those periods and not into the later of those periods.".

Saving and transitional provisions

38. Where any person—

(a) has made an election in respect of a capital expenditure incurred for the purposes of an approved agricultural project under Schedule 4A; or

(b) has been given an approval in respect of an approved food production project under Schedule 4C,

prior to the coming into operation of sections 4, 7, 9, 34 and 35 of this Act, all provisions of the principal Act before being amended under those sections shall continue to apply for the purpose of paragraphs *(a)* and *(b)*.

CHAPTER III

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendments to the Real Property Gains Tax Act 1976

39. (1) Sections 40, 48 and 49 are deemed to have come into operation on 1 October 2005.

(2) Sections 42 and 43 come into operation on 1 January 2006.

(3) In the national language text, section 47 is deemed to have come into operation on 11 September 2004.

Amendment of section 9

40. The Real Property Gains Tax Act 1976, which is referred to as the "principal Act" in this Chapter, is amended in section 9—

(a) in subsection (3), by deleting the words "person or"; and

(b) by inserting after subsection (3) the following subsection:

"(3A) The Minister may in any particular case exempt any person from all or any of the provision of this Act, either generally or in respect of any income of a particular kind or any class of income of a particular kind.".

Amendment of section 15

41. Section 15 of the principal Act is amended by inserting after subsection (2) the following subsection:

"(3) Where in a year of assessment—

(a) any assessment made in respect of a person for any year of assessment has been determined by the court on appeal or review; or

(b) any exemption granted to any person under this Act has been withdrawn for failing to comply with any condition imposed in granting such exemption, the Director General may, in the first mentioned year of assessment or within six years after its expiration make an assessment in respect of that person for any year of assessment for the purpose of giving effect to the determination or withdrawal, as the case may be.".

Amendment of section 24

42. Subsection 24(6) of the principal Act is amended—

(a) in paragraph *(b)*, by substituting for the comma at the end of that paragraph a full stop; and

(b) by deleting the words "and the sum required for making the repayment shall be charged to the Consolidated Fund".

New section 24A

43. The principal Act is amended by inserting after section 24 the following section:

"Fund for Tax Refund

24A. (1) There shall be paid from time to time into the Fund established under section 111B of the Income Tax Act 1967 such amount of tax collected under this Act as may be authorized by the Minister.

(2) The money of the Fund referred to in subsection (1), shall be applied for the making of a refund of an amount of tax paid in excess of the amount payable as ascertained in section 24.

(3) Section 14A of the Financial Procedure Act 1957 shall not apply to any refund in excess of the amount payable as ascertained in section 24.".

Amendment of section 45

44. Section 45 of the principal Act is amended—

(a) by substituting for subsection (2) the following subsection:

"(2) Any officer appointed under the law relating to income tax may exercised any function of the Director General under this Act (not being a function exercisable by statutory order or a function exercisable under sections 46 and 57).";

(b) by deleting subsections (3) and (4); and

(c) in subsection (5), by substituting for the words "under subsection (4) by a Senior Assistant or Assistant Director" the words "under subsection (2) by the appointed officers.".

Amendment of section 55

45. Section 55 of the principal Act is amended in subsection (1) by deleting the words ", the Director of Inland Revenue, Sabah or the Director of Inland Revenue, Sarawak,".

Amendment of section 56

46. Section 56 of the principal Act is amended by deleting the words ", to the Director of Inland Revenue, Sabah, to the Director of Inland Revenue, Sarawak,".

Amendment of Schedule 2

47. In the national language text, the principal Act is amended in Schedule 2, by substituting for subparagraph 3(g) the following subparagraph:

"*(g)* pelupusan mana-mana aset yang boleh dikenakan cukai menurut suatu skim kewangan yang diluluskan oleh Bank Negara atau Suruhanjaya Sekuriti sebagai suatu skim yang mengikut prinsip Syariah, jika pelupusan itu menghendaki secara ketat bagi maksud mematuhi prinsip itu tetapi yang tidak dikehendaki bagi mana-mana skim kewangan yang lain.".

Amendment of Schedule 3

48. Schedule 3 of the principal Act is amended by deleting paragraph 3.

Saving and transitional provisions

49. Where prior to the coming into operation of the amendment to paragraph 3 of Schedule 3 to the principal Act under section 48 of this Act an individual is exempt on any gain accruing in respect of the disposal of a private residence under section 8 of the principal Act of which residence—

(a) owned by the wife of that individual—

(i) the election which has been made by that individual under paragraph 9 of Schedule 3 to the principal Act shall be disregarded for the purposes of the principal Act; and

(ii) there shall be no further exemption in respect of the disposal of any other private residences of the wife of that individual;

(b) owned by that individual—

(i) the wife of that individual is entitled to an exemption in accordance with paragraph 9 of Schedule 3 to the principal Act; and

(ii) there shall be no further exemption in respect of the disposal of any other private residences of that individual; or

(c) owned by that individual and his wife jointly, there shall be no further exemption in respect of the disposal of any other private residences of that individual and his wife.

CHAPTER IV

AMENDMENTS TO THE STAMP ACT 1949

Commencement of amendments to the Stamp Act 1949

50. (1) Sections 51, 52, 53, 55 and 56 are deemed to have come into operation on 1 October 2005.

(2) Section 54 comes into operation on 1 January 2006.

Finance

Amendment of section 21

51. The Stamp Act 1949, which is referred to as the "principal Act" in this Chapter, is amended in subsection 21(2) by deleting the words "or three ringgit as the case may require".

Amendment of section 43

52. The principal Act is amended by substituting for paragraph 43(5)*(b)* the following paragraph:

"(b) if it is stamped after the expiration of thirty days after it has been received in Malaysia, on payment in addition to the stamp duty of a penalty of—

(i) twenty-five ringgit or five per centum of the amount of the deficient duty, whichever sum be the greater, if the instrument is stamped within three months after the time for stamping;

(ii) fifty ringgit or ten per centum of the amount of the deficient duty, whichever sum be the greater, if the instrument is stamped later than three months but not later than six months after the time for stamping; or

(iii) one hundred ringgit or twenty per centum of the amount of the deficient duty, whichever sum be the greater, in any other case.".

Amendment of section 80

53. Section 80 of the principal Act is amended—

(a) in subsection (1), by deleting the words "instrument or";

(b) by inserting after subsection (1) the following subsection:

"(1A) The Minister of Finance may in any particular case—

(i) exempt from duty any instrument which would otherwise be chargeable under this Act; or

(ii) reduce or remit the duties with which any instrument is chargeable."; and

(c) in subsection (2), by deleting the words "any instrument or".

New section 80A

54. The principal Act is amended by inserting after section 80 the following section:

"Fund for Tax Refund

80A. (1) There shall be paid from time to time into the Fund established under section 111B of the Income Tax Act 1967 such amount of duty collected under this Act as may be authorized by the Minister.

(2) The money of the Fund referred to in subsection (1), shall be applied for the making of a refund of any duty or any other payment required to be made by the Collector under this Act.

(3) Section 14A of the Financial Procedure Act 1957 shall not apply to any refund of any duty or any other payment required to be made under this Act.

(4) Where the Collector is authorized or required by this Act to make any refund of any duty or any other payment required under this Act, he shall certify the amount of the sum to be refunded or paid and cause the refund or payment to be made forthwith.".

Amendment of First Schedule

55. The First Schedule of the principal Act is amended in item 22 by inserting after subitem (5) the following subitem:

"(6) Being the security for securing the payment or repayment of money for the purchase of goods (within the meaning given under the First Schedule of the Hire Purchase Act 1967) in accordance with the Syariah principle of *Al Bai Bithaman Ajil*.	RM10.00".

Amendment of Fifth Schedule

56. The Fifth Schedule of the principal Act is amended in paragraph 8 by substituting for the words "Kuala Lumpur Stock Exchange" the words "Bursa Malaysia".

Finance

CHAPTER V

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

Commencement of amendments to the Petroleum (Income Tax) Act 1967

57. Sections 60 and 64 come into operation on 1 January 2006.

Amendment of section 2

58. The Petroleum (Income Tax) Act 1967, which is referred to as the "principal Act" in this Chapter, is amended in paragraph 2(1)*(a)*, in the definition of "authorized officer" by substituting for the words "(1), (2), (3) or (4)" the words "(1) or (2)".

Amendment of section 39

59. Section 39 of the principal Act is amended by inserting after subsection (3) the following subsection:

"(4) Where in a year of assessment—

(a) any assessment made in respect of any chargeable person for any year of assessment has been determined by the court on appeal or review; or

(b) any exemption granted to any chargeable person under this Act has been withdrawn for failing to comply with any condition imposed in granting such exemption,

the Director General may in the first mentioned year of assessment or within six years after its expiration make an assessment in respect of that chargeable person for any year of assessment for the purpose of giving effect to the determination or withdrawal, as the case may be.".

New section 50A

60. The principal Act is amended by inserting after section 50 the following section:

"Fund for Tax Refund

50A. (1) There shall be paid from time to time into the Fund established under section 111B of the Income Tax Act 1967 such amount of tax collected under this Act as may be authorized by the Minister.

(2) The money of the Fund referred to in subsection (1), shall be applied for the making of a refund of an amount of tax paid in excess of the amount payable as ascertained in section 50.

(3) Section 14A of the Financial Procedure Act 1957 shall not apply to any refund in excess of the amount payable as ascertained in section 50.".

Amendment of section 69

61. Section 69 of the principal Act is amended—

(a) by substituting for subsection (2) the following subsection:

"(2) Any officer appointed under the law relating to income tax may exercise any function of the Director General under this Act (not being a function exercisable by a statutory order or a function exercisable under subsection 70(1) and section 82).";

(b) by deleting subsections (3) and (4); and

(c) in subsection (5), by substituting for the words "under subsection (4) by Senior Assistant or Assistant Director of Inland Revenue" the words "under subsection (2) by the appointed officers.".

Finance

Amendment of section 77

62. Section 77 of the principal Act is amended in subsection (1) by deleting the words ", the Director of Inland Revenue, Sabah, or the Director of Inland Revenue, Sarawak,".

Amendment of section 78

63. Section 78 of the principal Act is amended by deleting the words ", to the Director of Inland Revenue, Sabah, to the Director of Inland Revenue, Sarawak,".

Amendment of section 81

64. The principal Act is amended by substituting for section 81 the following section:

"**81.** Where the Director General is authorized or required by this Act to make any refund or repayment, he shall certify the amount of the sum to be refunded or repaid and cause the refund or repayment to be made forthwith.".

CHAPTER VI

AMENDMENT TO THE LABUAN OFFSHORE BUSINESS ACTIVITY TAX ACT 1990

Amendment of section 18

65. The Labuan Offshore Business Activity Tax Act 1990 is amended in subsection 18(1) by substituting for the words "a Deputy Director General, an Assistant Director General, a Senior Assistant or Assistant Director, of Inland Revenue referred to in" the words "any officer appointed under".

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BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA