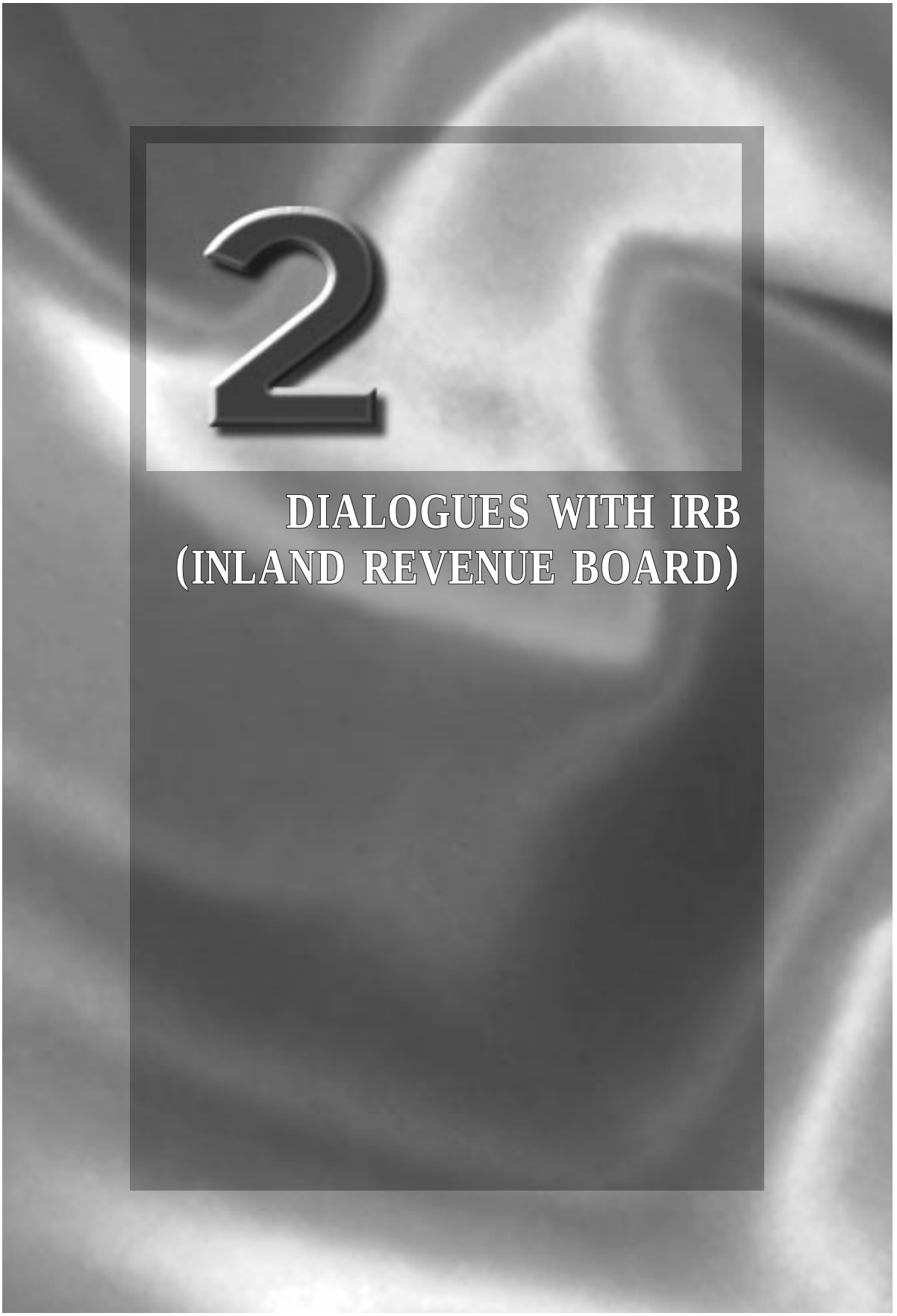

2

DIALOGUES WITH IRB (INLAND REVENUE BOARD)

A Extension of Time for Submission of Income Tax Returns by Companies (Borang C) under Section 77(1a) /Revision of Estimate of Tax Payable under Section 107c

1.0 A dialogue between the Operations Division of the Inland Revenue Board (IRB) and representatives of MICPA, MIA, MIT, MAICSA and MATA was held on September 30, 2002 to discuss issues relating to estimation of tax, deadline for filing Borang C and increase in tax payable by companies.

2.0 The IRB has advised that the following tax treatment and procedures are to be complied with:

2.1 Extension of Time for Filing Borang C:
Year of Assessment 2001 (Self Assessment System)

The IRB has granted an extension of time to **September 14, 2002** for the submission of Borang C for year of assessment 2001 in respect of companies whose accounting year ended on December 31, 2001. Borang C must be received by the IRB **not later than September 14, 2002.**

2.2 Submission of Borang C and Borang R

Companies are granted an extension of time of **one month** for the submission of Borang C / Borang R in respect of year of assessment 2002 and subsequent years. This means Borang C / Borang R are required to be submitted within **seven months** from the date following the close of the accounting period of the company which constitutes the basis period for that year of assessment. Penalty will be imposed for late submission of the relevant forms.

2.3 Payment of Balance of Tax under Section 103A/
Debt Due to Government (Section 108)

Where a balance of tax is payable (i.e. tax payable after deducting the estimated tax paid) or a debt is due to Government for a year of assessment, the amount should be paid within 7 months from the date following the close of the accounting period. This concession is granted for year of assessment 2002 and subsequent years.

2.4 Estimate of Tax Payable for Companies which are Subject to Withholding Tax under Section 107A

Companies (non resident) which are subject to withholding tax under section 107A are also required to submit the estimate of tax payable under section 107C. The estimate of tax payable for a year of assessment should be made in accordance with provisions of section 107C(3). However, in making payment of the estimated tax, companies can take into account the withholding tax paid. The amount of withholding tax paid must relate to the estimate of tax payable on income that will be assessed for that year of assessment.

2.5 Revision of Estimate of Tax Payable in the Ninth Month of the Basis Period

Companies which have submitted the prescribed form for the estimate of tax payable are allowed to revise the estimate of tax payable in the sixth month of the basis period. Commencing from year of assessment 2002, companies are also allowed to revise the estimate of tax payable in the ninth month of the basis period.

To facilitate the processing of revisions of the estimate of tax payable in the **ninth month** of the basis period, companies are required to comply with the following procedure:

(i) Revision of the estimate of tax payable must be made using Borang CP204A with the appropriate revision to item 6 in Borang CP204A.

(ii) Write clearly the words "PINDAAN BULAN KE 9" in the empty space at the top of Borang CP204A.

A sample copy of Borang CP204A is attached as per Appendix 2-1.

2.6 Increase in Tax under Section 107C(9) and (10)

Companies are required to self compute the increase in tax under section 107C(9) and (10) and make payment to the IRB. To assist companies in adapting to this new procedure, the following approach is taken:

(a) Year of assessment 2001

Companies can self compute the increase in tax under section 107C(9) and (10) and make payment to the IRB, or make payment upon receipt of the notice of increase in tax issued by the IRB.

(b) Year of assessment 2002 and subsequent years

(i) Increase in tax under section 107C(9)

Companies are required to self compute the increase in tax and make payment to the IRB as soon as the company fails to pay or are short in the payment of the estimate of tax payable. In respect of an increase in tax that should have been paid prior to this, the increase in tax must be paid not later than November 30, 2002.

(ii) Increase in tax under section 107C(10)

Companies are required to self compute the increase in tax and make payment to the IRB not later than the date determined for the submission of Borang C. For companies which have already submitted Borang C, the increase in tax must be paid not later than November 30, 2002.

2.7 Over-payment of Tax for Year of Assessment 2001

Generally, excess of tax payment cannot be used to set-off the estimate of tax payable for future year(s) of assessment. The IRB will refund the tax over-payment. However, if a company encounters difficulty in making payment of the estimate of tax payable and there is tax over-payment in respect of earlier years of assessment, the company can submit an application for set-off to the Collection Branch. A credit balance can only be used for the instalment payments of the estimate of tax payable with the approval of the Director of the Collection Branch.

MICPA Circular No. TEC/019/11/2002
and TEC/014/08/2002
Issue date: August – September 2002

B Issuance of Notice of Instalment Payments (Form CP 205) For Year of Assessment 2003

1.0 The Inland Revenue Board (IRB) informed that the Notice of Instalment Payments (CP 205) will only be issued to companies which failed to comply with the provisions of section 107C of the Income Tax Act 1967. However, there have been instances where the notice of instalment payments for year of assessment 2003 were issued to companies which have complied fully with the provisions of section 107C.

The IRB advises that companies which have complied with the provisions of section 107C, i.e. having submitted Form CP 204 within the prescribed time period and furnished the estimate of tax payable of an amount which is not less than the prescribed minimum amount, can ignore the notice of instalment payments. These companies can proceed to make the instalment payments according to Form CP 204 which has been submitted to the IRB.

MICPA Circular No. TEC/011/07/2002
Issue date: July 2, 2002

C Increase in Tax Under Section 107C / Format of Notice of Assessment

1.0 INCREASE IN TAX UNDER SECTION 107C(9) & (10) OF INCOME TAX ACT 1967

In response to inquiries received, the Inland Revenue Board (IRB) has advised that any increase in tax under sub-section 107C(9) or sub-section 107C(10) is to be paid to the IRB in the following manner:

(a) Sub-section 107C(9) provides that where any instalment due and payable has not been paid by the due date, the amount unpaid shall be increased by a sum equal to 10% of that amount.

The IRB has advised that in such situations, the company is required to self compute the increase in tax and make payment to the IRB as soon as the due date expires. However, the IRB will also issue a notice of demand for the increase in tax.

(b) Sub-section 107C(10) provides that where the tax payable under an assessment exceeds the estimate (or revised estimate) of the tax payable for a year of assessment by more than 30% of the tax payable under the assessment, then the difference in excess of 30% of the tax payable under the assessment shall be increased by a sum equal to 10% of the said difference.

IRB has advised that sub-section 107C(10) does not require the IRB to issue a notice of claim where there is an increase in tax. Where Borang C is received within the prescribed period, the day on which the return is submitted to the Director General is deemed as the date of assessment. Therefore, the increase in tax will be imposed when Borang C is submitted to the IRB. The company is required to self compute the increase in tax and make payment to the IRB when Borang C is submitted. However, the IRB will also issue a notice of demand for the increase in tax.

Where there is a delay in the submission of Borang C, an assessment under section 90(2A) will be made and the increase in tax may be imposed as soon as the notice of assessment is issued.

1.2 The Institute has submitted an appeal to the IRB to maintain the practice under the old tax regime where companies were allowed to make payment of an increase in tax under sub-section 107C(9) and sub-section 107C(10) upon receipt of the notice of increase in tax. The outcome of the appeal will be advised in due course.

2.0 FORMAT OF NOTICE OF ASSESSMENT UNDER THE COMPUTERISED SELF ASSESSMENT SYSTEM

2.1 The IRB has advised that in respect of companies submitting Borang C under section 77(1A), the Director General is deemed to have made an assessment on the day on which the return is submitted to the IRB. Borang C is also deemed as the notice of assessment and therefore, a notice of assessment will no longer be issued by the Director General. However, the Director General may still make an assessment under sections 90(1A), 91, 96A, etc.

2.2 In line with the implementation of the self assessment system for company taxpayers, a new computer system has been developed to handle the issuance of notices of assessment and other functions. The format of the notices of assessment under the new system is different from the existing format. Under the new system, all information will be printed through the computer system using normal A4 size paper bearing the IRB logo. Only the relevant information will be printed. The new notices of assessment have been issued since March 2002 but in limited number of cases. This will increase commencing from August 2002. However, the old format of notices of assessment will still be issued to company taxpayers until the IRB has migrated fully to the new computer system, which date will be announced in due course.

2.3 The list of notices of assessment that will be used are as follows:

No.	Form No.	Description
1	CP.9-Pin.2002	Notis Taksiran Asal [Original Notice of Assessment]
2	CP.9A-Pin.2002	Notis Taksiran Seksyen 90(2) [Notice of Assessment under Section 90(2)]
3	CP.9B-Pin.2002	Notis Taksiran Seksyen 90(2A) [Notice of Assessment under Section 90(2A)]
4	CP.61-Pin.2002	Notis Taksiran Tambahan [Notice of Additional Assessment]
5	CP.56-Pin.2002	Pemberitahuan Taksiran Yang Di-kurangkan [Notification of Reduction in Assessment]
6	CP.63-Pin.2002	Perhitungan Pembayaran Balik [Computation of Repayment]
7	CP.61A-Pin.2002	Notis Taksiran Yang Dinaikkan [Notice of Increase in Assessment]
8	CP.10-Pin.2002	Notis Taksiran Komposit [Notice of Composite Assessment]

3.0 AMENDMENTS TO EXPLANATORY NOTES TO BORANG R FOR YEAR OF ASSESSMENT 2002

The IRB has informed that items 4, 5 and 6 of Part I of the Explanatory Notes to Borang R, Statement under Section 108(5), have been amended as per Appendix 2-2.

Borang R and the Explanatory Notes can be downloaded from the IRB's website at http://www.hasilnet.org.my.

MICPA Circular No. TEC/015/08/2002
Issue date: September 12, 2002

D Dialogue with Technical Division of IRB

1.0 A dialogue between the Technical Division of the Inland Revenue Board (IRB) and representatives of MIA, MIT, MICPA, MAICSA and MATA was held on June 17, 2002.

2.0 INTERPRETATION OF 'CREDITING'

The term 'crediting' is used in various provisions of the Income Tax Act, 1967 (ITA) with regard to withholding tax. However, the Institutes noted that there has been no guidance on the meaning or interpretation of this term. The term 'crediting' has been interpreted (in the Canadian case of *Compagnie Miniere Quebec Cartier v. MNR (84 DTC 1348)*, to mean more than the making of an accounting entry, and it involves "making a sum of money available to" the creditor.

In view of the fact that the time frame within which withholding tax is payable rests on the meaning of this term, the Institutes sought the IRB's clarification and guidance on the interpretation of the term 'crediting', particularly under the current self assessment regime.

The IRB clarified that the term 'crediting' refers to something more than a mere "book entry". An amount is considered as having been credited to a non-resident if it has been made available to or for the benefit of the non-resident. The term 'paying/crediting' would therefore mean:

i. the date the amount is paid; or

ii. the date the amount is credited to the bank account of the recipient; or

iii. the date of a contra entry.

The IRB will inform the assessment branches accordingly.

3.0 SECTION 29 OF THE ITA – BASIS PERIOD TO WHICH "INCOME OBTAINABLE ON DEMAND" IS RELATED

Pursuant to section 29 of the ITA (notwithstanding sections 23 to 28), where a person is able to obtain the receipt of income on demand, that income shall be treated as received in the period when such a circumstance arises. Meanwhile, under section 27 of the ITA, interest income is taxable on a received basis in the period in which the interest income first becomes receivable. Therefore, under section 27 of the ITA, the charge to tax only arises when the interest income is received, although it could relate to an earlier period. However, under section 29 of the ITA, if that interest income is "obtainable on demand" in a particular period, the interest income would be taxable in that period, notwithstanding that it may not have been received in that period.

In view of the self assessment system, the Institutes sought the IRB's clarification on the following matters:

(i) the type of circumstances that would fall within the tax treatment governed by section 29 of the ITA;

(ii) the distinction between "income obtainable on demand" and "income that is receivable"; and

(iii) the distinction between amounts due from related parties and amounts due from third parties, in the context of item (ii) above.

The IRB clarified that "income obtainable on demand" and "receivable" can be distinguished as follows:

The former refers to a situation where at any particular time, the amount due is available and the payee is able to demand the payment at that time irrespective of the actual payment date. The latter can refer to a situation whereby the amount may be receivable but may not be payable until a specific date as pre-determined under an agreement.

The application of sections 27 and 29 does not distinguish transactions between related parties and transactions with third parties.

4.0 PARAGRAPH 49, SCHEDULE 3 OF THE ITA – "RELEVANT INTEREST"

The Institutes noted that where a taxpayer rents and uses an industrial building and incurs renovation costs on the rented

building, the taxpayer should be having a "relevant interest", and should be entitled to claim industrial building allowances (IBA) on the renovation costs. It has been the practice of the IRB to grant IBA on the renovation costs under such circumstances. Nevertheless, the Institutes sought the IRB's confirmation that it is still the practice of the IRB to grant IBA on renovation costs incurred on an industrial building rented (and not owned) by the taxpayer.

The IRB confirmed that renovation costs incurred by the tenant on an industrial building under the abovementioned circumstances will qualify for industrial building allowance.

5.0 FINANCIAL INSTITUTIONS - AMORTISATION OF PREMIUMS/ ACCRETION OF DISCOUNTS

For accounting purposes, premiums/discounts will be amortised over the life of the security. For tax purposes, any deduction/taxability would arise upon maturity or realisation of the security. However, due to the volume of such transactions undertaken by financial institutions, it is difficult in practice to apply the "realised" basis to each separate investment. The Institutes are of the view that the IRB should take a more practical and pragmatic approach by accepting the accounting basis and thus, adopting the accruals basis for the tax treatment of such items.

The IRB clarified that the accruals basis of accounting for amortisation of premiums or accretion of discounts (over the life of the security/instrument) is acceptable for tax purposes. However, the taxpayer must adopt a consistent basis of recognition of such income/expenditure.

6.0 PROVISION FOR DIMINUTION IN VALUE OF STOCKS/SHARES

For banks, stockbrokers, share traders, etc., stocks/shares would be regarded as their "stock in trade". Pursuant to section 35 of the ITA, a deduction should be available for the diminution in value of such stocks. For practical purposes, it is often the case that a provision is made rather than an actual write-down to take into account of the fact that the value may fluctuate. As this would result in the stocks being stated at their carrying values, The Institutes are of the opinion that a deduction should be allowed for this type of provision. The Institutes understood that a draft ruling on this issue has been prepared and in the interim, the Institutes sought the IRB's confirmation that a deduction would be allowed on the said provision.

The IRB clarified that where a general provision for diminution in value of stocks is made (for instance 20% or 30% of the stock value), the amount provided for would not be tax deductible.

On the other hand, where a provision for diminution in value of stocks is made to reflect the market value (i.e. for instance, by comparing the cost of stock with the market value at a particular time), the increase in the provision would be allowed for tax deduction.

Nevertheless, the IRB further clarified that in order to claim a tax deduction for a provision for diminution in value of stocks, the taxpayer would need to substantiate the basis in determining the diminution in value of stock.

The IRB also reiterated that in the event the provision for diminution in value of stocks is no longer required, the amount is to be written back and will be brought to tax.

7.0 WITHHOLDING TAX

7.1 Regional Hubs

In recent years, a few large organisations have set up regional hubs to centralise their resources with respect to management and administrative services. This is often implemented with the view to minimising operating costs and maximising efficiency and productivity in order to achieve group synergy. The costs incurred by the regional centre for the shared services are normally recovered from the companies in the group by way of reimbursement of costs or charge of management fees.

The Institutes are of the view that the aforesaid reimbursement of costs or management fee payments to non-residents should not fall within the ambit of section 109B(1)(b). If the IRB takes the view that withholding tax is applicable to those payments and in the event that the non-residents are not able to claim the tax withheld as a credit in their home countries, the tax suffered would be an added cost to the group and may defeat the purpose of setting up the regional centre to undertake shared services. For multi-national conglomerates, the use of shared service centres for "backroom activities" is an essential part of the efforts to reduce costs and increase competitiveness of its businesses.

The Institutes requested the IRB's confirmation that the above would not attract withholding tax under section 109B(1)(b) of the ITA.

The IRB confirmed its previous position and reiterated that the aforesaid reimbursements and management fee payments fall under section 4A and therefore, are subject to withholding tax, other than payments for day to day administrative routine services.

7.2 Reimbursements of Out-of-Pocket Expenses

A non-resident consultant comes to Malaysia to perform work for a short period of time (i.e. no permanent establishment arises and therefore section 109B applies) for a local entity. The consultant incurs air fare, taxi fare, hotel accommodation and meal expenses, etc., and these expenses are reimbursed by the local entity. The IRB had stated in an earlier dialogue that reimbursements of out-of-pocket expenses made to a non-resident would be subject to withholding tax under section 109B since the IRB is concerned about the possibility of abuse and withholding tax evasion by taxpayers, by incorporating elements of a fee in the reimbursements.

The Institutes had earlier expressed the view that withholding tax should not be applicable under the following circumstances:

(i) where the Malaysian taxpayer directly bears/pays the out-of-pocket expenses instead of the non-resident; or

(ii) where the non-resident bears/pays the out-of-pocket expenses (which are later reimbursed by the local entity), provided that such expenses can be substantiated by documentary evidence such as receipts, invoices, etc.

The Institutes requested the IRB's confirmation that withholding tax would not be applicable in the above circumstances.

The IRB reconfirmed its decision made in an earlier dialogue held on April 20, 2001 that the reimbursement of out-of-pocket expenses forms part of the gross income of a non-resident and therefore falls within the ambit of withholding tax.

The IRB acknowledged the comments raised by the Institutes but indicated that the IRB is reluctant to allow reimbursements to be excluded from withholding tax due to the possibility of abuse.

Nevertheless the IRB informed that it will reconsider the above issue in greater detail.

7.3 Public Ruling on the Scope of Withholding Tax

Section 109B(1)(b) of the Act provides that withholding tax is required to be deducted from the payments made to non-residents in respect of the following:

- technical advice, assistance or services rendered in connection with technical management or administration of any specific, industrial or commercial undertaking, venture, project or scheme.

The scope of section 109B(1)(b) has been a controversial issue. The Institutes noted that in practice, the IRB has been taking a wide interpretation of this section. As a result, withholding tax is applicable on a wide range of payments made to non-residents. In practice, most taxpayers would deduct the withholding tax to avoid the imposition of a penalty by the IRB for non-compliance with the withholding tax provisions. This inevitably increases the costs of operations and may be seen as a disincentive to those businesses affected by such a withholding tax.

The Institutes suggested that the IRB issue a public ruling to set out clearly the scope of the withholding tax. It would be very useful if the types of payments which fall within the ambit of the above provision are clearly specified, particularly with respect to the reimbursement of costs or management fee payments by multinational conglomerates for the shared services to non-residents. This will facilitate tax compliance under the self assessment system.

The IRB informed that a public ruling would be issued with regard to withholding tax under section 109B.

8.0 PRIVATE USAGE OF MOTOR VEHICLES IN CONTROLLED COMPANIES

The Institutes understood that it has been the practice of the IRB to disallow a deduction for the private usage of motor vehicles in the case of controlled companies. The Institutes are of the view that if this treatment is adopted, then it should not be necessary for the private usage of such vehicles to be reported as benefits in kind in the relevant employees' Forms EA. In other words, if the company has paid the tax on this private usage of motor vehicles, the employee should not be assessed on it as well. In light of the self assessment system, the Institutes sought clarification from the IRB on this matter.

The IRB clarified that separate principles of taxation govern the two issues raised by the professional bodies. If the motor vehicles are used for private purposes then the expenses are not wholly and exclusively incurred in the production of income and therefore not treated as an allowable deduction in determining the taxable income of a company. On the other hand, if a director or an employee of a company (including a controlled company) is being provided with a motor vehicle and petrol which can be used not only for business but also for private purposes, the motor vehicle is a benefit in-kind and is assessable to tax under section 13(1)(b). There is no provision in the Act which provides that if a company has paid the tax on the private usage of motor vehicles, its employees should not be assessed on it as well.

9.0 PARAGRAPH 71, SCHEDULE 3 OF THE ITA

9.1 Pursuant to Paragraph 71, Schedule 3 of the ITA, the Director General of Inland Revenue (DGIR) may withdraw any allowance and impose a balancing charge to an asset which was owned by a person for a period of less than two years. The Institutes highlighted that in a reply to an inquiry made to the then DGIR (Mr S Sundaram), he confirmed in his letter dated 14 July 1969 (reference no.: HQ/594/mss) as follows:

"I confirm that the paragraph will not be applied in the normal case of a bona fide sale to a third party of an asset which has been disposed off because it was unsuitable or no longer required for the purpose of the business.

On the other hand, paragraph 71 will be applied in a case such as prestige car owned by a company for use of a director or by a self-employed professional person where an attempt at tax avoidance is evident".

In view of the above, in the recent dialogue with the Operations Division of the IRB on April 15, 2002, it was confirmed that the stand taken by Mr S Sundaram was still in practice, and that Paragraph 71 would not be applicable to a bona fide disposal of assets. On the other hand, Paragraph 71 would only be applicable on the disposal of luxury assets.

The Institutes requested the Technical Division of the IRB to reconfirm the views of the Operations Division of the IRB.

9.2 Paragraph 71 of Schedule 3 of the ITA states that "*where a person has incurred qualifying expenditure in relation to an asset which is owned by that person for a period of* ***less than two years*** *...*".

The Institutes had received feedback from their members that they had encountered situations whereby different interpretations on the term 'two years' were used by different IRB officers (i.e. some officers interpret "two years" as being two years of assessment, while some officers interpret "two years" as being two calendar years based on the exact number of days).

In view of the self assessment system, the Institutes sought clarification on this matter.

The IRB confirmed that the above position has not changed.

The words "two years" refer to two calendar years based on the exact number of days.

10.0 PIONEER STATUS INCENTIVE - DETERMINATION OF PRODUCTION DAY

A company would normally assume a particular production day (for the purpose of the Pioneer Status Incentive) based on the relevant known criteria and subsequently prepares/submits its tax return on this basis while waiting for MIDA to notify the company of the actual production day. However, subsequent to the filing of the tax return, if MIDA specifies a later production day which results in a higher tax liability, the Institutes are of the opinion that penalties should not be imposed and that the company should be allowed to revise its tax return since at the time the tax return was filed, MIDA had yet to come out with a confirmation on the production day of the company.

The Institutes sought the IRB's confirmation that no penalty would be imposed and that the company would be allowed to revise its tax return under such circumstances.

The IRB informed that MITI will determine the production day when the company has met all the criteria set and submitted its audited accounts. The criteria are made known to the company when the application for the incentive is approved.

If the company has complied with all the required conditions, the pioneer certificate will be issued (which states the production day) in less than a month.

Where the company has prepared its accounts based on its production day and the production day subsequently determined by MITI is a later date, no penalty will be imposed.

However, where a company makes a false claim or where a company fails to substantiate the claim, penalty will be imposed.

11.0 INSURANCE COMPANIES - ACTUARIAL SURPLUS ARISING/ TRANSFERRED

From years of assessment 1995 to 1998, any actuarial surplus arising to insurance companies was taxable on an 'arising' basis. However, with effect from year of assessment 1999, the Institutes understood that this treatment was changed and actuarial surpluses are only taxable as and when they are transferred. Since an actuarial surplus may have been taxed prior to year of assessment 1999 when it initially arose, and it may be taxed again subsequent to year of assessment 1999 when it is later transferred, this would result in the actuarial surplus being taxed twice, as shown in the following illustration.

		Amount RM
YA 1995	Balance as at January 1, 1994	NIL
	Add: Actuarial surplus arising for YA 1995	6,803,021
YA 1996	Balance as at January 1, 1995	6,803,021
	Add: Actuarial surplus arising for YA 1996	6,846,401
YA 1997	Balance as at January 1, 1996	13,649,422
	Add: Actuarial surplus arising for YA 1997	4,513,065
YA 1998	Balance as at January 1, 1997	18,162,487
	Add: Actuarial surplus arising for YA 1998	22,594,771
		40,757,258
	Less: Actuarial surplus transferred	(4,000,000)
YA 1999	Balance as at January 1, 1998	36,757,258
	Less: Actuarial surplus transferred	(6,000,000)
YA 2000 (PYB)	Balance as at January 1, 1999	30,757,258
	Less: Actuarial surplus transferred	(4,000,000)
YA 2000 (CYB)	Balance as at January 1, 2000	26,757,258
	Less: Actuarial surplus transferred	(8,000,000)
YA 2001	Balance as at January 1, 2001	18,757,258

Total actuarial surplus that arose in YA 1995 to 1998
= RM40,757,258
Total actuarial surplus that was transferred in YA 1999 to 2001
= RM18,000,000

The actuarial surplus transferred arose from the brought forward balance which has already been taxed in accordance with the legislative provision from YA 1995 to 1998. Therefore, to assess the amounts transferred of RM18,000,000 will lead to double taxation.

The Institutes sought the IRB's confirmation that no double taxation would arise on actuarial surplus which was already taxed prior to year of assessment 1999.

The IRB informed that the above issue is a policy matter and has been referred to the Ministry of Finance for consideration.

12.0 PARAGRAPH 62, SCHEDULE 3 OF THE ITA

Some companies write off their fixed assets in the following circumstances:

(i) although the assets may be usable, they have no resale value due to their condition.

(ii) the assets are obsolete or in disrepair, and are discarded as it is not cost effective to upgrade or repair the assets.

(iii) the assets are no longer in existence as they have been discarded due to wear and tear or cannibalised for the repair of other similar assets or are lost.

Normally, such assets have no market value or disposal value. However, the Institutes noted that some IRB officers have been applying the provisions of paragraph 62 of Schedule 3 of the ITA, to disallow claims for balancing allowance on the write off of these assets. Paragraph 62 states that where an asset is disposed off, its disposal value shall be taken to be its market value at the date of disposal. The Institutes understood that IRB officers have adopted the stand that the market values of these assets are deemed to be equal to their tax written down values.

The Institutes requested the IRB to give due consideration to the circumstances in which an asset is written off in determining claims for balancing allowance. The

Institutes also suggested that the IRB provide guidelines on the type of supporting documentation required when making the claims for balancing allowance.

The IRB confirmed that the following can be used to determine the market value of an asset at the time of disposal/write off for the purposes of claiming a balancing charge/balancing allowance:-

i. insurance claims; or

ii. a valuation from an independent valuer

The IRB further clarified that the above would apply in establishing the market value of large assets such as factory machinery, etc.

However, this may not be appropriate for the disposal or write off of small assets with a low value (such as chairs, tables, etc.), as the value of these assets would not justify the cost of an independent valuation.

13.0 CAPITAL EXPENDITURE OF NOMINAL VALUE

Pursuant to Public Ruling 2/2001, expenditure on assets that have an expected life span of not more than 2 years (implements, utensils and articles) is to be dealt with on a replacement basis in which the cost of replacing such assets is to be allowed as deductible expenditure under section 33(1)(c) in determining the adjusted income of the business.

However, it is noted that some companies have a policy of writing off capital expenditure incurred below a certain nominal amount (depending on the policy adopted) to the profit and loss accounts. These items may have an expected life span of more than 2 years and hence, do not fall under the criteria stipulated in the Public Ruling 2/2001. However, in light of the self assessment regime, the Institutes are of the opinion that, in administering the law, the IRB should take into consideration the ways in which businesses are being operated and that there should be some form of harmonisation between accounting treatment and tax treatment.

Since the issue here merely involves the deferment of income rather than the loss of income to the IRB, the Institutes are of the opinion that the IRB should allow companies to claim an outright deduction of this type of capital expenditure based on

the accounting policy adopted by the companies. This will also make it easier to prepare tax computations and thus, assist in lowering compliance costs.

The IRB informed that it is currently not in favour of such a treatment and requested the professional bodies to make representations to the Ministry of Finance.

14.0 REINVESTMENT ALLOWANCE

The Institutes requested the IRB to confirm that if a company wishes to revise its tax payable by claiming reinvestment allowance on capital expenditure incurred in prior years, the company may do so by revising its tax returns submitted earlier pursuant to section 131 of the ITA (i.e. for relief in respect of error or mistake) without any penalty being imposed.

The IRB confirmed that no penalty would be imposed in such situations.

15.0 SECTION 113(2) OF THE ITA

The Institutes are of the opinion that, as a matter of principle, penalties should not be imposed on technical adjustments made on tax computations prior to YA 2001 (i.e. prior to the implementation of the self assessment system). However, some members had encountered situations whereby a tax deduction which was initially claimed on repairs and maintenance was later reclassified as capital expenditure by the IRB subsequent to a field audit. The Institutes understood that a penalty under section 113(2) was imposed by the IRB in such a situation.

Prior to the implementation of the self assessment system (i.e. prior to YA 2001), as the onus of determining the taxpayer's tax liability lies with the IRB, it has been the practice of the IRB in the past not to impose penalties on technical adjustments made subsequent to a field audit by the IRB.

However, the Institutes understood that some IRB officers have recently deviated from this past practice by imposing penalties on technical adjustments made subsequent to a field audit by the IRB on tax computations prior to YA 2001. The Institutes are of the opinion that penalties should not be imposed on technical adjustments made on tax computations prior to YA 2001 and the Institutes are also of the view that there should be some guidance given to all IRB officers on how tax audits should be conducted with regard to tax computations prior to YA 2001.

The IRB informed that a technical adjustment generally arises due to a differing interpretation of the tax legislation by the taxpayer, either due to a provision not being clearly defined or due to the existence of conflicting case law. The IRB confirmed that no penalty will be imposed in the event of a pure technical adjustment as this would not involve an intention to evade taxes.

However, whether a transaction is merely a technical adjustment or an intentional act to evade tax will very much depend on the circumstances of each case and will vary on a case to case basis.

It was proposed that a separate dialogue be held with Bahagian Audit Cukai.

16.0 INTEREST INCOME ASSESSABLE EITHER UNDER SECTION 4(A) OR SECTION 4(C) OF THE ITA

Some companies are required to place funds in fixed deposits as a guarantee in order to obtain banking facilities used for business purposes (and not for investment purposes). The Institutes are of the opinion that the interest income from the fixed deposits derived therefrom should be assessable as part of the business source under section 4(a) instead of as a non-business source under section 4(c) of the ITA. However, the Institutes understood that different IRB officers have been taking different views on the treatment of this particular income.

The Institutes sought confirmation from the IRB that the interest income derived from funds placed in fixed deposits as a guarantee in order to obtain banking facilities used for business purposes (and not for investment purposes) should be assessable as business source under section 4(a) instead of non-business source under section (c) of the ITA. In considering this issue, the Institutes requested the IRB to take into consideration the fact that nowadays, there are various circumstances where companies are required by certain authorities to place funds in fixed deposits that generate interest income in order to obtain facilities (or even contracts for contractors) for business purposes (and not investment purposes).

The IRB noted the views of the professional bodies that under current business practices, financial institutions will generally request a company to place a fixed deposit to serve as a security deposit before approving any loan facili-

ties or working capital for its business purposes and therefore, the interest income received should not be deemed to be a non-business source of income.

However, the IRB maintains the view that interest derived from fixed deposit under the above circumstances would generally be deemed to be a non-business source and therefore taxable under section 4 (c).

17.0 DEFINITION OF ENTERTAINMENT TO EXCLUDE ADVERTISING AND PROMOTION

Pursuant to section 39 of the ITA, entertainment is defined to include:

(a) the provision of food, drink, recreation or hospitality of any kind; and

(b) the provision of accommodation or travel in connection with or for the purpose of facilitating entertainment of the kind mentioned in (a) above.

Since the introduction of the non-deductibility of entertainment expenses, the Institutes noted that the IRB has adopted a wide interpretation of entertainment, with the result that certain advertising or promotion expenses incurred for the purposes of business have been regarded as entertainment, and not allowed as a tax deduction. With effect from year of assessment 1995, the Act was amended to exclude from the definition of entertainment, promotional gifts consisting of articles incorporating the conspicuous advertisement or logo of the company. (However, the Act is silent on the tax deductibility of advertising and promotion expenses.)

Non-deductibility of certain advertising and promotion expenses has increased the cost of operating a business for companies, as these expenses are usually incurred to increase the sales of products or services, for example:

(i) provision of incentives (e.g. local/overseas trips) to dealers/salesmen who meet sales targets;

(ii) promotional events at public venues to launch or provide new products or services.

The Institutes are of the opinion that the expenses incurred on advertising and promotion with the intention to improve the company's profile and promote its products and services should not be regarded as entertainment.

The Institutes suggested that the IRB issue a public ruling to specify the scope of entertainment expenses and examples of the types of entertainment expenses that are not allowable.

The IRB informed that generally "promotional and advertisement" expenses in promoting a business is tax deductible under section 33(1) of the ITA.

On the issue of "entertainment", the IRB has questioned the deductibility of certain "promotional" expenses incurred by taxpayers (such as incentive trips, non-related free products, etc.) which are, in essence, entertainment expenses.

Nonetheless, in view of the Self Assessment System and the need for clarity, the IRB informed that a public ruling will be issued on the matter.

The IRB further requested the professional bodies to assist in compiling examples in respect of the type of promotional expenses that are generally incurred by taxpayers.

18.0 DRAFT PUBLIC RULINGS

The IRB had in November 2000 issued draft public rulings on the following subjects for comment:

(i) allowable pre-operational and pre-commencement of business expenses for companies; and

(ii) rent from letting of real properties.

The Institutes requested the IRB to advise on the status of these public rulings.

The IRB informed that the public ruling on item (i) has been issued whereas the public ruling for item (ii) is in the final stage of preparation and the final draft will be forwarded to the professional bodies for their views and comments.

19.0 TAX INCENTIVES TO INCREASE EXPORT OF SERVICES

In the previous dialogue held with the Technical Division of the IRB on November 13, 2001, the IRB had clarified that qualifying services relating to tax incentives to increase export of services are:

(i) private health care and education services that are undertaken within Malaysia, (i.e. the patients and students would be coming to Malaysia from outside Malaysia); and

(ii) as for other services (i.e. legal, accounting, etc.) the incentive will apply if such services are performed outside Malaysia.

Subsequent to the dialogue, the Income Tax (Exemption) (No. 9) Order 2002 (the Order) was issued in January 2002. The Order defines qualifying services as services which are provided to foreign clients, from Malaysia, and in relation to the provision of private health care and private education, the services to be provided to foreign clients are to be provided either in Malaysia, or provided from Malaysia.

The Institutes sought clarification on the following matters:

(i) With regard to private health care and education services, the Order defines qualifying private health care and education services as services provided to foreign clients which are to be provided either in Malaysia, or provided from Malaysia. In this regard, the Institutes sought clarification on the distinction between the term "in Malaysia" and the term "from Malaysia";

(ii) With regard to services other than private health care and education services (i.e. legal, accounting, etc.), contrary to the stand taken by the IRB during the previous dialogue (i.e. services must be performed outside Malaysia), the Order defines qualifying services as services which are provided to foreign clients from Malaysia. In this regard, the Institutes sought clarification on this discrepancy;

The IRB clarified the following terms :-

(a) "in Malaysia" means that services are provided in Malaysia, e.g. a foreign client seeks medical treatment and being admitted in a private hospital in Malaysia or a foreign student is undergoing a course in a Malaysian private educational institution;

(b) "from Malaysia" means that the services are provided from Malaysia by a person in Malaysia to a foreign client outside Malaysia, e.g. through internet / distance learning or mails etc.

(c) "services performed outside Malaysia" must be in relation to any contract to export services from a person in Malaysia to a foreign client if the contract requires the services to be rendered or performed overseas.

(iii) The Institutes sought clarification whether there would be a prescribed form issued by the IRB.

The Institutes suggested that the IRB issue a guideline to assist taxpayers in the application of the above incentive.

The IRB confirmed that a prescribed form (Form BT/PET/2002) has been issued and will consider issuing a guideline on the matter.

20.0 APPROVED OPERATIONAL HEADQUARTERS COMPANY

Income tax is charged at the rate of 10% on the chargeable income of an approved operational headquarters company in relation to the source consisting of the provision of qualifying services.

The Institutes sought the IRB's confirmation that the tax charged for the years of assessment prior to YA 2001, as well as the tax paid in YA 2001 and subsequent years, can be included as part of section 108 credit (compared aggregate).

The IRB confirmed that the tax paid can be included in the section 108 credit computation.

21.0 SEGREGATION OF EXPENSES FOR BUSINESS AND NON-BUSINESS PURPOSES

The Institutes understood that under the self assessment regime, taxpayers are required to identify and segregate expenses incurred for business and non-business purposes. However, the Institutes noted that practical problems have been encountered by small businesses in complying with this requirement.

Illustration

A single mother rents a shop floor for the purpose of carrying on a business and she also lives at the premises with her children. She has a car which is used for both business and domestic purposes.

Practical difficulty is encountered in segregating the expenses incurred for business and non-business purposes, such as the following:

(i) Utility Bills and Rental

Should the allocation of the expenses incurred be based on floor area utilisation or the duration of usage (i.e. business hours vs non-business hours)?

(ii) Car Expenses

Should the allocation of the expenses be based on mileage or hours of usage of the car? It is quite normal that the taxpayer may drop off her children at school on the way to a business appointment.

The Institutes proposed that for practical reasons, the allocation of expenses for business and non-business purposes be based on a justifiable ratio rather than a detailed computation for each item.

The IRB clarified that it is willing to accept any allocation which is based on a consistent and reasonable basis of apportionment.

As an illustration in a case where half of the time a car is used for business purposes and the other half of the time the car is for private usage, then the fair basis of allocating the related expenses (such as fuel, maintenance, etc.) will be 50%.

22.0 BASIS PERIOD FOR UNIT TRUST ENTITIES

The Institutes are of the opinion that for practical purposes, it may be more sensible if the tax computations prepared prior to year 2004 are prepared based on the financial year as the basis period for a particular year of assessment, so that it is in line with the basis stipulated in the Income Tax (Amendment) Bill 2001 (i.e. preparation of tax computations based on financial year).

As a concession, the IRB confirmed that the IRB is agreeable for tax computations of unit trusts to be computed by taking the financial year as being the basis period provided the basis is consistently applied.

23.0 OUTSTANDING ISSUES

23.1 **Investment Holding Companies** (issue raised in the dialogue on August 25, 2000)

Pursuant to section 60F of the ITA, a company whose activities consist wholly of making and deriving income from investments, is an investment holding company (IHC).

Nonetheless, recently there have been situations whereby the IRB have treated a company having both management services and investment holding activities as an IHC under section 60F.

The IRB has instead allowed a deduction of expenses up to the amount of management fee income earned.

The Institutes sought the IRB's clarification that in the event a company is having both management activities and investment holding activities (i.e. the company is not one whose activities consist wholly of making investments), the company is not an IHC under section 60F but is carrying on a business activity as per section 4(a) of the ITA instead, and therefore deduction of expenses should not be restricted up to the amount of management fee income earned.

The IRB informed that the determination of the tax treatment would be based on a case to case basis.

23.2 **Deduction on Cost of Developing Websites** (issue raised in the dialogue on November 13, 2001)

As an effort to encourage the usage of information and communication technology, an annual deduction of 20% is allowed on the cost of developing websites.

The Institutes sought clarification on the type of costs that would qualify for such deduction as currently the cost of developing a website would include expenditure on computer hardware and software, which would normally be eligible for capital allowances of 40%.

Alternatively, the Institutes proposed that instead of identifying the expenditure incurred on the development of a website (other than computer hardware and software) and allowing a 20% annual deduction, the IRB should consider the total development cost of a website as being eligible for the same capital allowance rate as that for computer hardware and software.

The IRB clarified that hardware and software costs presently qualified for accelerated capital allowance. Costs of developing website other than costs on hardware and software will be considered under the new rules at the rate of 20% annual deduction.

E Minutes of Dialogue with Operations Division of IRB

1.0 A dialogue between the Operations Division of the Inland Revenue Board (IRB) and representatives of MIA, MICPA, MIT, MAICSA and MATA was held on April 15, 2002.

2.0 FILING PROGRAMME FOR 2002 – NON COMPANY CASES

The Institutes sought confirmation that there were no changes to the filing programme and that extension of time for filing of tax returns for Y/A 2001 would be allowed as follows :

(i) Application for extension of time to file return forms after May 31, 2002 must be made on or before **April 15, 2002.**

(ii) No extension of time beyond **May 31, 2002** will be allowed for the following cases :

- All partnership (D) cases
- All salary (SG) cases

(iii) For all other cases, application for extension of time will be allowed up to **July 31, 2002** in the ratio of 50% for June and 50% for July.

In addition, the Institutes suggested that the IRB issue the filing programme for non-company cases at the beginning of the year in order to facilitate compliance with the filing deadlines.

The IRB confirmed that there were no changes to the filing programme. The deadlines for submission of return forms set out above shall apply for 2002.

The IRB did not approve the Institute's request to defer the deadline to April 30, 2002 for applications for extension of time to file tax return forms after May 31, 2002.

The IRB also informed that next year's filing programme would be issued by early March 2003.

3.0 TAX AUDITS

Feedback from members of the Institutes indicated that some field audits appeared to take on the nature / character of tax investigations and in terms of the scope/coverage of the review. Members were unclear as to the scope of a tax audit vis-a-vis that of a tax investigation.

The Institutes suggested that further clarification/ guidelines be issued on the scope of tax audits so as to avoid ambiguity.

The Institutes also suggested that where substantial additional taxes were assessed following a tax audit, appropriate consideration be given to a taxpayer's request to settle the additional taxes via an instalment scheme.

The IRB informed that their tax audit officers have been issued with a manual on how tax audits should be conducted. If there are differences among the branches on the manner in which tax audits are conducted, the IRB hopes that these differences would be resolved in the near future.

The IRB also indicated that it is uncommon for their audit officers to take away documents from the taxpayers' premises since tax audits are supposed to be conducted at the taxpayers' premises. However, there may be instances where the IRB officers request to take certain documents back to their office for convenience. The IRB assured that the documents are taken back solely for audit purposes.

The IRB also clarified that the scope of a tax audit normally covers a period of one or two years, unless the IRB officer believes that there are valid reasons for them to go beyond that period of time.

The IRB also informed that in practice, taxpayers are allowed to settle the additional taxes via an instalment scheme. The respective IRB branches have the authority to approve instalment schemes of up to 12 months. However, where a taxpayer requires a longer period of time to settle the additional taxes, an application should be made directly to the Kuala Lumpur Branch, at Jalan Duta.

4.0 REFUNDS

4.1. Withholding Taxes

Pursuant to the recent Protocol to the Australian Double Tax Agreement, the need to deduct withholding tax under Section 109B of the Income Tax Act, 1967 (ITA) does not apply to payments made to Australian residents provided the Australian enterprise does not have a Permanent Establishment (PE) in Malaysia.

However, there are practical difficulties in applying this provision. One view is that withholding tax has to be deducted notwithstanding that a PE has not crystallised. After the end of the relevant year, an application for the refund of such withholding taxes should be made if it is true that no PE existed during the said year. The other view is that if it is envisaged that there is unlikely to be a PE in Malaysia (based on expected activities/services, etc), then no withholding tax needs to be deducted from the outset.

The Institutes suggested that the IRB issue a ruling on this matter. Taxpayers need to know the IRB's stand on this matter so that the proper procedure/approach can be followed.

In addition, where a deduction has been made (when it should not have been made) and a refund is then requested, the Institutes enquired as to the time frame within which such a refund would be made as well as the documentation required for such a refund to be made on a timely basis.

The IRB informed that guidelines will be issued soon on this matter.

4.2. Recording of Payments

A member of the Institute was recently informed by an IRB officer that currently, the IRB is unable to record in the taxpayers account any instalments paid where the IRB's receipt bears a number comprising "an alphabet followed by 6 digits". Only payments evidenced by a receipt bearing a number "22-followed by 9 digits" are being recorded. As such, overpayment of taxes made earlier cannot be processed.

The Institutes sought clarification on this matter. The above has created problems for the tax agents seeking verification and confirmation of their client's tax credit balances (supported with the relevant receipts) as well as applications for refunds.

The IRB informed that the problem had been resolved.

4.3. Refund of Over-Payment of Instalment Payments

At the meeting with the Operations Division of the IRB held on November 21, 2001, the Institutes had highlighted that following the submission of the annual tax return [Form C] for year of assessment 2001, many companies which had overpaid their tax for the said year of assessment had submitted an application to the IRB for a refund of the overpayment, accompanied by relevant supporting documents (i.e. lodgement letter, Form C and Form R received by the IRB, and copies of the receipts for the instalment payments).

It was understood that the IRB was unable to process requests for refund of tax overpayment due to some problems in its computer program. The IRB had indicated that it had allocated more resources to process requests for tax refund.

However, the Institutes have received feedback from members that the Collections Branch is not processing refunds for tax overpayment for year of assessment 2001 as no instruction on repayment has been issued by the IRB Headquarters. It appears that the IRB would only allow the overpayment to be set off against the Y/A 2002 tax instalment scheme. The Institutes pointed out that there are cases where the tax estimate for Y/A 2002 is NIL. There also appears to be an inconsistency in practice between the Kuala Lumpur and Kuching collection branches with respect to this matter.

Since under the self-assessment system, the return form submitted to the DGIR is the deemed notice of assessment, any tax overpayment should be promptly refunded to the taxpayer once Form C has been filed.

The Institutes again requested the IRB to process refund of tax overpayment expeditiously so that the taxpayers can better plan and utilise their financial resources more effectively for their business operations.

The IRB informed that during this transitional phase of implementing the computer programme for processing refunds under the Self Assessment System, taxpayers should apply for refund of tax overpayment for Y/A 2001 by writing to the Collections Branch of the IRB.

The IRB also informed that the inconsistency in practice between the Kuala Lumpur and Kuching Collections Branches was an isolated case and that the inconsistency would be resolved.

4.4. Refunds for Cases Where Estimates Have Been Revised After The Sixth Month

The Institutes requested the IRB to reconsider its practice that refund of overpayment of tax will only be made upon submission of Form C. Where an estimate has been revised downwards and no tax payments are due, refund should be made at that point of time.

Alternatively, the IRB should allow the set-off of the overpayments against the tax liability for the following year of assessment instead of waiting for Form C to be filed. If not, this creates cash flow problems for taxpayers.

There are adequate provisions in the law to cover situations where the actual tax payable is much higher than the estimated liability.

The IRB advised that as it is difficult to determine the tax position of a company prior to the end of its accounting period, the IRB will maintain its current practice to refund overpayment of tax only after submission of Form C. The IRB may allow earlier refund in certain circumstances on a case by case basis, such as the following:

i. Where the taxpayer is certain that no income will be earned/derived eg the business has been discontinued; or

ii. Where all of the income of the taxpayer is subject to withholding tax.

Under such circumstances, the taxpayer should submit the application for refund to the Operations Division of the IRB.

4.5. Documents Required

When taxpayers request for refund of tax overpayments, the IRB has requested for the following supporting documents:-

(a) First page of Form C for YA 2001

(b) A copy of CP 204/205 for YA 2001 and 2002

(c) Receipts for instalments paid for YA 2001

The Institutes felt that the above request was unnecessary as items (b) and (c) are IRB generated documents, whereas item (a) would have been filed with Pusat Pemprosesan. The Institutes are of the opinion that the IRB should reconsider the current procedure for refund as taxpayers should not be burdened with unnecessary administrative procedures in seeking a repayment of their money.

The IRB advised that under the Self Assessment System, taxpayers are not required to submit items (a) to (c) when requesting for refund since all the documents are already available at Pusat Pemprosesan of the IRB. However, the IRB may request for copies of item (c), i.e. receipts for instalment payments, if payments have been erroneously made to different account codes.

The IRB also advised that if taxpayers encounter any problem when requesting for refunds, they should contact the IRB's 'Call Centre' at 03-6201 9748.

4.6. Refunds Arising From Section 110 Set-Off Under Self Assessment System

Under the self-assessment system, all Forms C (including refund cases) are to be submitted to Pusat Pemprosesan.

Many taxpayers are concerned that there could be undue delay between the time of filing Form C and the time when a Section 110 refund is to be processed, (probably after a desk or field audit is conducted).

The Institutes requested the IRB to clarify the following matters:-

(i) The time frame taken for Pusat Pemprosesan to refer such cases to the relevant Assessment Branches.

(ii) The time frame for the respective Assessment Branches to conduct the tax audit so as to expedite the refund.

The IRB advised that the Section 110 refund process would commence as soon as possible.

5.0 ESTIMATE OF TAX PAYABLE – YEAR OF ASSESSMENT 2003

Section 107C(3) provides that the estimate of tax payable for the year of assessment 2003 shall not be less than the revised estimate of tax payable for the year of assessment 2002 or if no revised estimate is furnished, the estimate of tax payable for the year of assessment 2002. However, the DGIR may pursuant to Section 107C(8) direct any company to make payment by instalments on account of tax which is or may be payable by the company.

Recently, some members have contacted the IRB for approval of the estimate of tax payable submitted for the year of assessment 2003 a few weeks before the due date for payment of the instalment (i.e. the 10th day beginning from the second month of the basis period for the year of assessment 2003). The members were informed that Forms CP 204 have not been reviewed by the IRB and pending the outcome of the review, the taxpayers are required to pay the instalments based on the estimate or revised estimate of tax payable for the year of assessment 2002.

In view that the current economic situation has adversely affected many businesses, the Institutes sought the IRB's co-operation to expedite the review of Forms CP 204 so as to avoid unnecessary financial burden on the taxpayers. The Institutes proposed that alternatively, pending the reply from the IRB, the affected taxpayers be allowed to settle the lower estimate of tax payable put forth and adjustment be made accordingly when the outcome is received from the IRB.

The IRB disagreed with the above proposal stating that taxpayers could pay lower instalments only after the CP204s have been reviewed by the IRB. The IRB also assured that early replies would be provided to taxpayers requesting for revisions of their estimated tax payable.

The IRB also advised that there are only two situations where taxpayers can cease payment of the instalments before approval by the IRB is received:

i. Where the company has no source of income; or

ii. Where the company's income is fully subject to withholding tax.

6.0 NON RESIDENT COMPANIES - FILING OF FORM CP204 (ESTIMATE OF TAX PAYABLE UNDER SECTION 107 C)

Section 107A of the ITA requires any person making contract payments to a non resident company to deduct a withholding tax at 15% on account of the tax for a year of assessment. The deduction on account of the tax is an advance payment of tax by the non-resident company.

On the other hand, Section 107 C (1) also requires a non-resident company to file a Form CP204 and pay the estimate of the tax payable. The estimate of the tax payable and the deduction on the contract payment is on the same income and for the same year of assessment.

Hence, it appears that a non-resident company undertaking a project in Malaysia is under an obligation under self assessment to suffer withholding tax as well as to comply with an instalment payment scheme. This situation creates a tremendous cash flow problem and needs to be addressed.

The Institutes proposed that the IRB consider exempting non-resident companies from filing Form CP204. Alternatively, if a non-resident company is required to file Form CP204, then no withholding tax deductions should be made on the contract payments.

The IRB clarified that where the source of income of the non-resident company is fully subject to withholding tax, the company is not required to file Form CP204. In such situations, the company is required to attach the following documents when submitting Form C:

i. Form CP204 previously submitted (if any);

ii. Letter from the payer that withholding tax has been deducted from the contract payments; and

iii. Confirmation from the taxpayer that it has no other source of income.

If there are other sources of income, Form CP204 would still need to be submitted for the income not subject to non-withholding tax.

7.0 RESPONSE TO APPLICATIONS

Tax agents outside the Klang Valley have encountered delays in obtaining confirmation from the IRB in Kuala Lumpur on variation of instalment plans and approval for variation in tax estimates.

This has caused significant practical problems as clients are obligated to continue paying existing instalments (which can be quite substantial) until confirmation is received.

For example:

		Date of Request	Response from IRB (as at 21/3/02)
i)	Applied for utilisation of tax credit from prior years	10 Jan 2002	No reply yet
ii)	Applied for revision in tax estimates	8 Nov 2001	18 Jan 2002 (CP205 dated 8/1/02)
iii)	Applied for revision in estimate	19 Dec 2001	No reply yet
iv)	Applied for revision in estimate	5 Dec 2001	No reply yet

The Institutes expressed concern that Pusat Pemprosesan has been allocated rather extensive duties and tasks under the new tax regime and whether it is able to cope with its work.

The IRB commented that additional staff would be allocated to Pusat Pemprosesan as and when required.

8.0 CP200 ISSUED FOR OG CASES WITH EMPLOYMENT INCOME

In the past, taxpayers (with business sources) have been receiving Form CP200 with respect to the business source of income. However, in recent months, it appears that CP200 is being issued in respect of all income sources, including employment income. It does not take into account STD deductions being made on employment income. Therefore, a taxpayer is being asked to pay tax twice on the employment income.

Upon checking with the IRB, members were informed that the

IRB will not issue a revised CP200 (to take into account the STD deducted) and any request for a revised Form CP200 will be deemed as a variation of Form CP200 which would be subject to the under-estimation penalty provisions.

The Institutes requested the IRB to take the necessary action to avoid the issuance of CP200 on employment income. If this cannot be done, for whatever reason, any request for a revised CP200 (to exclude the employment income) should not be taken as a variation of CP200.

The IRB noted the above comments and indicated that appropriate action would be taken to address the issue.

9.0 FORM C

9.1 Extension of Time for Submission of Form C

During the dialogue between the Operations Division and the professional bodies held on April 2, 2001, the IRB had suggested that the professional bodies refer their request that companies be allowed to file their tax returns within 8 months after the financial year end to the Ministry of Finance. The Institutes have since submitted a memorandum to the Ministry of Finance on this matter and would appreciate very much if the IRB could support the proposals submitted by the Institutes.

The IRB indicated that the issue is still pending at the Ministry of Finance.

9.2 Business Code for Investment Holding Companies

In the Explanatory Note (Nota Penerangan) to Form C, the business code for an investment holding company (Syarikat Pemegang Pelaburan) is given in Appendix G (Lampiran G) as 65991. However, some members were advised by an officer from the IRB that this code is meant for companies whose income is chargeable to tax under Section 4(a) of the ITA, and is not applicable to companies chargeable to tax under Section 60F of the ITA. The members were also advised to insert "0" or "not applicable" or to leave the column for business code blank for companies chargeable to tax under Section 60F of the ITA.

The Institutes sought the IRB's confirmation on the above matter.

The IRB confirmed that the business code for investment holding companies is 65991.

9.3 Use of "0" or "-"

Our members were given to understand that the IRB's computer programme is not able to recognise "-" in certain columns of Form C.

The Institutes sought clarification from the IRB on the above matter and suggested that the IRB provide guidance on the usage of "0" or "-" to indicate "nil amount" or "not applicable" in Form C, especially in areas where Nota Penerangan is either silent or ambiguous in order to avoid unnecessary rejection of return forms.

The IRB confirmed that both "0" and "-"are acceptable.

10.0 CENTRALISED SUBMISSION OF FORM C, FORM R AND STD CHEQUES

Under the self assessment system, taxpayers are required to submit all Forms C, Forms R and STD cheques to a centralized unit in Kuala Lumpur. This has caused great inconvenience to outstation taxpayers. Moreover, many tax agents have been informed by the IRB that delays caused by the post office is not considered as a valid reason.

The Operations Division during the dialogue with the professional bodies held on April 2, 2001 had clarified that the IRB would deem the "postage date" on the envelope (enclosing the form) as the date of submission of the tax return for the year. The Institutes sought the co-operation of the IRB to inform all the IRB officers of the matter so that the taxpayers would not be penalized unnecessarily. In addition, the Institutes requested that the IRB allow branch offices to act as collection centers for the return forms, namely Form C, Form R and STD cheques.

The IRB clarified that the date of acknowledgement of receipt stamped on the return form by the IRB will be taken as the receipt date and that its computer system provides for a grace period of 14 days from the due date before a penalty is imposed.

The IRB also informed that its branch offices are allowed to accept submissions of return forms but taxpayers are discouraged from submitting to the branches.

11.0 ACKNOWLEDGEMENT OF RECEIPT OF FORM C UNDER SELF-ASSESSMENT SYSTEM

The Institutes have been made to understand that the date of acknowledgement of receipt of Form C is the date the information is entered into the computer by Pusat Pemprosesan.

The Institutes sought confirmation on the above matter. The Institutes expressed the view that such a procedure would result in most tax returns submitted being deemed as late submissions. The Institutes also enquired whether acknowledgement of receipt would be issued to tax agents outside Kuala Lumpur.

The IRB stated that the receipt date will be the date the return form arrived at the IRB office. The IRB also indicated that it will look into the suggestion that an acknowledgement of receipt be issued to tax agents.

12.0 ERRORS IN TAX RETURNS

The Institutes sought clarification on the time frame that Pusat Pemprosesan would take to return a Form C (which has been erroneously completed) to the taxpayer so that the errors can be corrected.

The Institutes requested the IRB to be reasonable as there are likely to be various errors in the tax return as most tax agents and taxpayers are completing the new forms for the first time and there have been various clarifications, etc.

The Institutes also suggested that where Form C is returned to the taxpayer for rectification of errors, the IRB stipulate a time frame within which the taxpayer is expected to return the corrected Form C so that no penalties for late submission will be imposed if the corrected Form C is submitted within the stipulated time frame.

The IRB advised that only Form C which contains serious errors (e.g. omission of taxable income, etc) will be returned to the tax payer for correction. Penalty will be imposed if the Form C is returned to the tax payer as serious errors should not be made.

13.0 PAYMENT OF TAX

13.1. Late Receipt or Non Receipt of Notices Issued by IRB

(a) At the dialogue with the IRB held on November 21, 2001, the issue of late receipt or non-receipt of notice of assessment was highlighted.

It was also pointed out that the IRB appeared to have discontinued the practice of post-dating the notice of assessment to allow for mailing time. Furthermore, the envelopes containing the notice of assessment no longer bear the postal date stamp and therefore, it would be difficult to prove that the notice of assessment was received late.

The Institutes have received further feedback from members that there have been instances where the notice of assessment from the UKTH unit was not received by either the taxpayers or tax agent. In responding to the tax agent's enquiry, the assessment branch officer indicated that as the address on the notice of assessment was correct and there was no returned mail by the post office, it was assumed that the taxpayers / tax agent had received the notice of assessment and the penalty imposed could not be waived.

The Institutes requested the IRB to review the procedure for sending notices of assessment to ensure that the notices are received in good time by the taxpayers so that they do not suffer unnecessary late payment penalties, which could be quite substantial in some cases.

The issue was noted by the IRB. The IRB also informed that taxpayers are given 30 days from the date the notice of assessment is generated by its computer system to make the necessary payment.

(b) The IRB in its guidelines for completion of Part N to Part R of Form C for YA 1999 stated that for YA 1999, a concession would be granted to allow taxpayers the flexibility of a 44-day period to remit the tax due under a notice of assessment (instead of the usual 30 day period). The Institutes sought confirmation that the 44-day concession to settle the tax liability is still applicable.

The IRB confirmed that the 44-day concession is still applicable until further notice.

(c) The Institutes also sought clarification on whether the IRB has obtained the consent of Pos Malaysia regarding the stamping of postal date on the envelopes containing the notice of assessment.

The IRB indicated that the matter will be reviewed.

13.2. Collection Units

The Institutes were given the understanding that Collection units have recently been set up in certain Assessment branches to facilitate refund and offsetting of tax credits for individual taxpayers.

The Institutes sought clarification on the role and scope of responsibility of these units so that there is clarity of purpose and taxpayers are made aware of these developments.

The Institutes also to requested the IRB to update the professional bodies if there are any changes in procedures and practices in the respective divisions and branches of the IRB.

The IRB clarified that the Collection units are entrusted with the same responsibilities as that of the Collections Branch in Kuala Lumpur except for collecting tax payments, which is still done by the Collections Branch.

The IRB also advised that Biro Khidmat Korporat (BKK) is in charge of updating and disseminating information on changes in procedures and practices of the IRB, including the Self Assessment System for non-company cases.

13.0 APPEALS

The Institutes were given the understanding that all appeals should be addressed to Pusat Pemprosesan. However, in accordance with Public Ruling 3/2001, appeals should be made to the IRB Branch where the company's income tax file is located (i.e. the Assessment branch).

The Institutes sought clarification on whether appeals should be addressed to Pusat Pemprosesan or the Assessment branch.

The IRB confirmed that for simple appeals under the Self Assessment System (e.g. where the taxpayer follows the tax treatment set out in a public ruling but does not agree with it), the appeal should be submitted to Pusat Pemprosesan together with the tax returns.

The IRB also advised that if the taxpayer disagrees with the tax treatment set out in a public ruling and consequently does not follow the treatment, the taxpayer should disclose the matter (i.e via a letter) to the IRB when submitting the tax returns. Where the IRB issues a notice of additional assessment, any appeal against the additional assessment should also be submitted to Pusat Pemprosesan.

Where an appeal arises from a tax audit conducted by the IRB, it should be submitted to the IRB branch that conducted the audit.

15.0 TAXPAYER DATABASE

The Institutes highlighted the following matters to the IRB:-

(a) When the tax files of taxpayers are transferred, e.g. from IRB-Kuala Lumpur to IRB-Kuching, the taxpayers are given new reference numbers. However, the old reference numbers of the taxpayers are sometimes not cancelled.

Consequently, the taxpayers will receive two copies of forms, notices, etc. under two different reference numbers.

(b) Despite numerous letters by the tax agents informing the respective IRB offices of the change in tax agents, as well as returning the IRB documents (e.g. Form C, Form CP204, etc), forms and notices continue to be sent to the previous tax agents.

The IRB informed that a task force is currently looking into the problem.

16.0 CASES UNDER APPEAL

16.1. Form Q

The IRB is currently appealing against the Court decisions in a number of cases, e.g. Multipurpose, etc.

The Institutes sought confirmation on whether in the interim, before a final decision is reached by the courts, a taxpayer who is appealing against the current practice or stand taken by the IRB is required to submit a 'Form Q' with the tax return or a letter of objection will suffice. This will avoid any unnecessary paperwork to be completed later on when a case is finally decided by the court, which could be some years from now.

The IRB confirmed that submission of a letter of objection will suffice. However, the taxpayer may submit Form Q if the taxpayer so desires.

16.2. Stand-Over

The Institutes suggested that where a decision has been made by a lower court in favour of the taxpayer and an appeal against the decision is pending (and bearing in mind the duration of an

appeal process), the IRB consider granting a "stand-over" of the taxes in question before a final decision is reached.

The IRB informed that a stand-over may be issued on a case by case basis.

17.0 STAMPING OF PASSPORTS

The Immigration officers at the immigration checkpoints at the airports have been requesting expatriates issued with the immigration 'gold cards' to swipe their cards (similar to the auto gate concept applicable to Malaysian passport holders) instead of stamping their passports. Consequently, these expatriates will not have "stamps" on their passports to enable them to verify their residence status in Malaysia. When the expatriates insisted on getting their passports stamped, the immigration officers have been reluctant to do so.

Some members had approached the IRB on this issue and they were requested to obtain a print-out from the Immigration Department to confirm the expatriates' entry and exit from Malaysia. Upon submitting their requests for a print out to the Immigration Department, the immigration officers replied that they can only do so if the IRB issues an official letter for such request.

The Institutes were given the understanding that the IRB indicated that it would not issue such a letter to the Immigration Department.

The Institutes sought clarification on how the above matter could be resolved and what alternative documentation might be acceptable to support the tax residence status of the expatriates.

The IRB responded that the print-out can be obtained from the Security Division of the Immigration Department provided that the request is supported by a letter from the IRB. The letter can be obtained from the Operations Division in Kuala Lumpur or from the respective branches of the IRB. The IRB also indicated that it would accept the counterfoil of airline tickets as proof of the expatriates' entry and exit from Malaysia.

18.0 NOTICE OF ASSESSMENT FOR COMPANIES UNDER LIQUIDATION

At the meeting with the Operations Division of IRB held on November 21, 2001, the IRB had confirmed that in the case of a

company under liquidation, the assessment branch would issue a letter to confirm whether the company under liquidation was liable to tax. This letter is required by the liquidator as a confirmation that the company has no tax liability and to proceed with the liquidation process.

However, many practitioners have encountered delays in the issuance of the clearance letters by the assessment branches which hinder the finalization of the companies' liquidation.

In this regard, the Institutes requested that the IRB expedite the issuance of the clearance letters so that the process of liquidation could be completed without undue delay.

The IRB informed that instructions will be given to the branches to expedite the issuance of clearance letters.

19.0 DORMANT COMPANY / INVESTMENT HOLDING COMPANY/ COMPANY UNDER LIQUIDATION

The Institutes were given the understanding by members in Johor Bahru that prior to the introduction of the self-assessment system, the assessment branch in Johor Bahru required that Forms C of dormant companies be submitted with a rubber stamp marked "BNC" on the first page of Form C. The assessment branch in Johor Bahru had also given the consession that dormant companies were not required to submit Form C to the IRB if the dormant companies had not registered an income tax reference number with the IRB. However, if a dormant company was no longer dormant, the company was required to notify the IRB when it opened a bank account or acquired land or other assets.

The Institutes sought confirmation from the IRB that under the self-assessment system, dormant companies are not required to register with the IRB to obtain an income tax reference number until the companies cease to be dormant; and for dormant companies which have already registered with the IRB, the companies are not required to submit the Form C, Form R and Form CP204 to the IRB until the companies are no longer dormant. For the latter cases, it will suffice for the dormant companies to inform Pusat Pemprosesan of the companies' dormant status.

The Institutes also sought confirmation from the IRB that investment holding companies and companies under liquidation which have no income for the year are not required to submit the Form C, Form R and Form CP204.

The IRB informed that return forms are issued to active companies only. If a company has become inactive, it should inform the IRB with appropriate explanations.

20.0. CLOSING OF COMPANY'S FILE

Taxpayers often encounter difficulty in getting the IRB to close the files of companies which have been inactive for the past few years and the tax returns have not been submitted to the IRB during these inactive years. To close the files, the companies have to submit the relevant tax returns together with the audited accounts for those outstanding years. This can be troublesome, costly and time consuming.

The Institutes suggested that since the Registrar of Companies (ROC) accepts statutory declaration (SD) as evidence for striking off a company, the IRB should also accept SD as sufficient proof for a company's file to be closed without the hassle of preparing and submitting the tax returns and audited accounts.

The IRB advised that companies which have become inactive but are issued with the return form should submit their tax returns with NIL income and state that they have ceased business so that the IRB can update its records. If no accounts are available, the companies concerned can submit the return forms only.

21.0 FINALISATION OF OUTSTANDING TAX RETURNS

The Institutes noted that there are many cases where notices of assessment have been issued or where appeals have been filed but no outcome has been received for the respective years of assessment. Many companies are desirous that their tax status be finalised without further delay and have requested for meetings with the assessment officers resolve any outstanding matters that may be holding up the finalisation of the tax returns. However, many taxpayers found it difficult to secure a commitment from the assessment officers for a meeting.

In this regard, the Institutes requested that the assessment officers expedite the finalisation of tax returns for the outstanding years of assessment and if possible, write to the taxpayers to arrange for meetings to resolve any outstanding issues.

The IRB informed that instructions have been given to the assessment officers to expedite the finalisation of tax returns.

22.0 NOTICE OF REDUCED ASSESSMENT (FORM JR)

The Institutes noted that many taxpayers have encountered difficulties in obtaining Form JR from the IRB, even though the IRB has agreed to the taxpayers' appeals for a reduction of tax liabilities.

The Institutes requested that the IRB expedite the issuance of Form JR to the taxpayers as in many cases, Forms JR amount to a large sum of money which could ease the cash flow burden of the taxpayers.

The IRB informed that instructions have been given to the assessment officers to expedite the issuance of Form JR.

23.0 AMENDMENT TO SECTION 75 OF THE ITA – COMPANY SECRETARY'S RESPONSIBILITY

The Institutes were made aware that the UKTH unit of the IRB has issued letters to company secretaries from secretarial / management firms to demand for payment of their clients' outstanding taxes. These secretarial / management firms are merely appointed to provide professional secretarial services and they are not part of their clients' management team. Hence, to hold the persons who are acting as company secretaries liable for their clients' outstanding tax liabilities under the new Section 75 of the ITA would be inequitable, as these persons may neither have direct influence on the decisions of their clients nor would they have full access to their clients' records.

In this regard, the Institutes sought clarification from the IRB on the scope of responsibility of the company secretaries under the amended section 75.

The Institutes pointed out that the Technical Division of the IRB at the dialogue with the professional bodies held on November 13, 2001 had indicated that the IRB would consider issuing guidelines on the application of the amended Section 75.

The Institutes requested that the IRB expedite the issuance of the guidelines so as to avoid the possibilities of abuse and inequitable liability.

The IRB informed that a guideline will be issued on this matter.

24.0 APPLICATION FOR REINVESTMENT ALLOWANCE

It is stated in *Nota Penerangan* for Form C that under the self assessment system, the taxpayer is required to keep proper record of the original documents relating to the capital expenditure incurred for the purposes of a qualifying project, the application form for reinvestment allowance, and computation of the allowance for purposes of verification in the event of a tax audit by the IRB.

In this regards, the Institutes sought clarification on whether Form EPS (application for reinvestment allowance) is required to be submitted to the Technical Division and Assessment Branch of the IRB.

The IRB clarified that the taxpayer is required to submit a copy of Form EPS to the Technical Division. A copy should be retained by the taxpayer for the IRB's perusal during a tax audit.

25.0 TAX EXEMPTION UNDER SECTION 44(6) OF ITA

An association/society which has previously enjoyed tax exemption under Paragraph 13, Schedule 6 to the ITA is required to reapply for exemption under section 44(6) of the ITA.

The Institutes sought clarification on whether there is a standard form for application for new tax exemption under section 44(6) from Y/A 2001 onwards, and the new requirements for such application.

The IRB advised that there is no prescribed form for such application. The taxpayers are required to submit a written application to the Technical Division.

26.0 PARAGRAPH 71, SCHEDULE 3 OF ITA

Pursuant to Paragraph 71, Schedule 3 to the ITA, the Director General may withdraw any allowance and impose a balancing charge on an asset which is owned by a person for a period of less than two years. In reply to an inquiry, the then DGIR (Mr M S Sundaram) confirmed in his letter dated July 14, 1969 (reference No: HQ/594/mss) as follows:

"I confirm that the paragraph will not be applied in the normal case of a bona fide sale to a third party of an asset which has been disposed of because it was unsuitable or no longer required for the purpose of the business.

On the other hand, paragraph 71 will be applied in a case such as prestige car owned by a company for use of a director or by a self-employed professional person where an attempt at tax avoidance is evident."

The Institutes sought confirmation that this is still the stand taken by the IRB, because as it is noted lately, some assessment officers have deviated from the original intention of the law and applied the provision of this paragraph to all assets disposed of within two years irregardless of whether the transactions constitute bona fide sales. The Institutes stressed that confirmation of the IRB's stand on this matter is crucial in view of the self assessment regime.

The IRB confirmed that the stand of the IRB as clarified by Mr M S Sundaram remains unchanged. Paragraph 71 will not be applied to a bona fide disposal of assets. It will only be applied to the disposal of luxury assets.

27.0. DOUBLE DEDUCTION FOR RESEARCH AND DEVELOPMENT UNDER SECTION 34A OF THE ITA

Section 34A of the ITA states that *"the Minister in approving the research pursuant to subsection (1) (a) may impose such conditions as he thinks fit or may specify the period or periods for the purpose of deduction under this section"*.

The Institutes have been made aware that when an application for the above incentive is submitted to the IRB, the taxpayer is often requested by the IRB to provide further information several times before an approval is given. The taxpayers feel that the whole process of application for the incentive is tedious and time consuming, and hence, defeats the purpose of the incentive being given.

The Institutes suggested that the IRB issue detailed guidelines on the application for the above incentive. The requirements should not be too onerous, so as to serve the purpose of the incentive.

The IRB informed that guidelines on the above matter have already been issued. The IRB would request for further information only if insufficient information was provided in the first place. The IRB advised that taxpayers should contact the IRB for clarifications on any uncertainties when completing the application form.

The IRB added that improvements to the current guideline would be made if necessary.

28.0 DIRECTORS FEE

The Institutes sought clarification from the IRB on whether schedular tax deductions on directors' fee are to be paid upon the payment of the directors fees or on the approval of such fees at the company's Annual General Meeting.

The IRB clarified that schedular tax deductions on directors fees are to be made upon the payment of such fees.

29.0 SELF ASSESSMENT SYSTEM FOR INDIVIDUAL CASES

Self assessment for individuals which will commence with effect from Y/A 2004 is fast approaching. In view of this, the Institutes requested that the IRB expedite the issuance of guidelines on the administration aspect of the self assessment system for individual taxpayers.

The IRB informed that Biro Khidmat Korporat (BKK) of the IRB is in the process of developing guidelines on this matter and taxpayers will be notified through the IRB's website.

30.0. E-MAIL ADDRESSES

In line with the information technology era, the secretariats of the Institutes requested for the e-mail addresses of the key contacts at IRB, to facilitate information flow between the IRB and the institutes.

The request was noted by the IRB.

31.0 COMMENCEMENT OF TAX INSTALMENTS

A company initially stated in Form CP204 that nil tax is due and payable but in the 6th month, determines that there will be a taxable amount and hence Form CP204A is lodged. The company wishes to commence the payment of tax instalments. Clarification was sought on whether the company should use the pay-in slip (CP207) for instalment payment No. 1 or No. 6 to commence the tax instalments payable.

The IRB advised that if the revision is made before the 10th day of the sixth month, then it will be instalment No. 5. On the other hand, if the revision is made after the 10th day of the sixth month, then it will be instalment No. 6.

The IRB added that even if the wrong instalment number was filled in the Form CP207, its computer system would be able to pick up the correct instalment payment number.

32.0 COMPUTER SOFTWARE FOR COMPLETING BORANG C FOR YEAR OF ASSESSMENT 2002

The IRB has completed the development of the computer software for competing Borang C, which can be downloaded from the IRB's website at http://.hasilnet.org.my. Taxpayers using the software to prepare Borang C are reminded that duly completed Borang C are to be submitted in **print copy** to Pusat Pemprosesan LHDN at the following address:

Lembaga Hasil Dalam Negeri
Pusat Pemperosesan
Tingkat 2 Blok 8A, Kompleks Pejabat Kerajaan
Jalan Duta, Karung Berkunci 11018
50990 Kuala Lumpur

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