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Foreword by President

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

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

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

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

Dato' Nordin Baharuddin
President
MICPA

Acknowledgement

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

***Ministries and Government Agencies*:**

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

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

Malaysian Industrial Development Authority (MIDA)

Percetakan Nasional Malaysia Berhad

Accounting Firms

BDO Binder Tax Services Sdn Bhd

Deloitte KassimChan Tax Services Sdn Bhd

Ernst & Young Tax Consultants Sdn Bhd

Horwath KL Tax Sdn Bhd

KPMG

PriceWaterhouseCoopers

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PART I

TAX REVIEW

1

IRB (INLAND REVENUE BOARD) GUIDELINES AND RULINGS

A. SUMMARY OF PUBLIC RULINGS ISSUED BY INLAND REVENUE BOARD

NO	TITLE	DATE OF ISSUE	OBJECTIVE
	2006		
*1	Public Ruling No. 6/2006 Tax Treatment of Legal and Professional Expenses	06.07.2006	This Ruling explains: a) the deductibility of legal and professional expenses; and b) the non-deductibility of legal and professional expenses.
2	Public Ruling No. 5/2006 Professional Indemnity Insurance	31.05.2006	This Ruling explains: a) the deductibility of premium expense paid for a professional indemnity insurance policy; and b) the taxability of insurance proceeds received on professional indemnity insurance.
3	Public Ruling No. 4/2006 Valuation of Stock in Trade and Work in Progress (Part 1)	31.05.2006	This Public Ruling on valuation of stock in trade and work in progress will be dealt with in 2 parts. Part 1 of this Ruling explains: a) the importance of valuation of stock in trade and work in progress for the purpose of ascertaining the adjusted income of a person from a business for the basis period for a year of assessment; b) the bases of valuation of stock in trade and work in progress; and c) the special rules to be applied when the person permanently ceased to carry on the business.

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

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

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

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

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

NO	TITLE	DATE OF ISSUE	OBJECTIVE
	2003		
1	Public Ruling No. 2/2003 "Key-man" Insurance	30.12.2003	This Ruling explains the deductibility of premium expense paid for a "key-man" insurance policy; and the taxability of insurance proceeds received on "key-man" insurance.
2	Public Ruling No. 1/2003 Tax Treatment of Leave Passage	05.08.2003	This Ruling explains the tax treatment of: a) leave passage provided for the employee by or on behalf of his employer as a benefit or amenity taxable under gains or profits from an employment; and b) expenditure incurred on leave passage provided to the employee by the employer in ascertaining the adjusted income of the employer.
	2002		
1	Public Ruling No. 2/2002 Allowable Pre-operational & Pre-commencement of Business Expenses	08.07.2002	This Ruling applies in respect of pre-operational and pre- commencement of business expense allowable to a company under the following: a) Income Tax (Deduction of Incorporation Expenses) Rules, 1974 [p.u.(A) 134 /1974] b) Schedule 4B, Income Tax Act 1967 – Qualifying Pre-operational Business Expenditure c) Income Tax (Deductions for Approved Training) Rules 1992 [P.U.(A)61 /1992] – as amended by Income Tax (Deductions for Approved Training) (Amendment) Rules 1995 [P.U.(A)111/1995]; and Income Tax (Deductions of Pre-commencement of Business Training Expenses) Rules 1996 [P.U.(A) 160 /1996].

NO	TITLE	DATE OF ISSUE	OBJECTIVE
2	Public Ruling No. 1/2002 Deduction for Bad & Doubtful Debts and Treatment of Recoveries	02.04.2002	This Ruling applies in respect of the deduction of bad and doubtful debts under section 34 and the treatment of recoveries under section 30 of the Income Tax Act 1967. It is effective for year of assessment 2002 and subsequent years of assessment.
	2001		
1	Public Ruling No. 7/2001 Basis Period for Business & Non-Business Sources (Companies)	30.04.2001	This Ruling applies in respect of section 21A of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment. This Ruling supersedes Public Ruling 2/2000 dated March 1, 2000 where it relates to companies.
2	Public Ruling No. 6/2001 Basis Period for a Business Source (Individuals & Persons other than Companies/Co-operatives)	30.04.2001	This Ruling applies in respect of section 20 and 21 of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment. This Ruling supersedes Public Ruling 3/2000 dated March 1, 2000.
3	Public Ruling No. 5/2001 Basis Period for A Business Source (Co-operatives)	30.04.2001	This Ruling applies in respect of section 20 and 21 of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment. This Ruling supersedes Public Ruling 2/2000 dated March 1, 2000 where it relates to co-operatives.

NO	TITLE	DATE OF ISSUE	OBJECTIVE
4	Public Ruling No. 4/2001 Basis Period for a Non-Business Source (Individuals & Persons other than (Companies)	30.04.2001	This Ruling applies in respect of section 20 and 21 of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment. This Ruling supersedes Public Ruling No. 1/2000 dated March 1, 2000.
5	Public Ruling No. 3/2001 Appeal Against an Assessment	18.01.2001	This Ruling applies in respect of section 99, 100, 101 and 102 of the Income Tax Act 1967. It is effective for the year of assessment 2001 and subsequent years of assessment.
6	Public Ruling No. 2/2001 Computation of Initial & Annual Allowances in Respect of Plant & Allowances	18.01.2001	This Ruling applies in respect of the computation of annual allowances for plant and machinery under paragraph 15, Schedule 3, Income Tax Act, 1967 and the Income Tax (Qualifying Plant Annual Allowances) Rules 2000 [P.U.(A) 52/2000]. This Ruling is effective for year of assessment 2000 (current year basis) and subsequent years of assessment.
7	Public Ruling No. 1/2001 Ownership of Plant and Machinery for the Purpose of Claiming Capital Allowances	18.01.2001	This Ruling applies in respect of ownership of plant and machinery for the purpose of claiming initial and annual allowances under paragraph 10 & 15, Schedule 3 to the Income Tax Act, 1967. It is effective from the year of assessment 2000 (current year basis) and subsequent years of assessment.

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

B IRB Guidelines on Tax Investigation Framework and Tax Audit Framework

In order to create and maintain public confidence in the tax administration system, both the Tax Investigation Framework and the Tax Audit Framework have been issued by the Inland Revenue Board (IRB) and took effect on 1 January 2007. Generally, these Frameworks aim to:

1. assist audit/investigation officers to carry out their tasks efficiently and effectively; and
2. assist taxpayers in fulfilling their obligations.

The Frameworks would apply to the statutory provisions under the Income Tax Act, 1967 (ITA), the Real Property Gains Tax Act, 1976, Petroleum (Income Tax) Act, 1967, Promotion of Investments Act 1986, Stamp Act 1949, Labuan Offshore Business Activity Tax 1990 and other acts administered by the IRB.

The salient features of the Frameworks are summarized as follows :

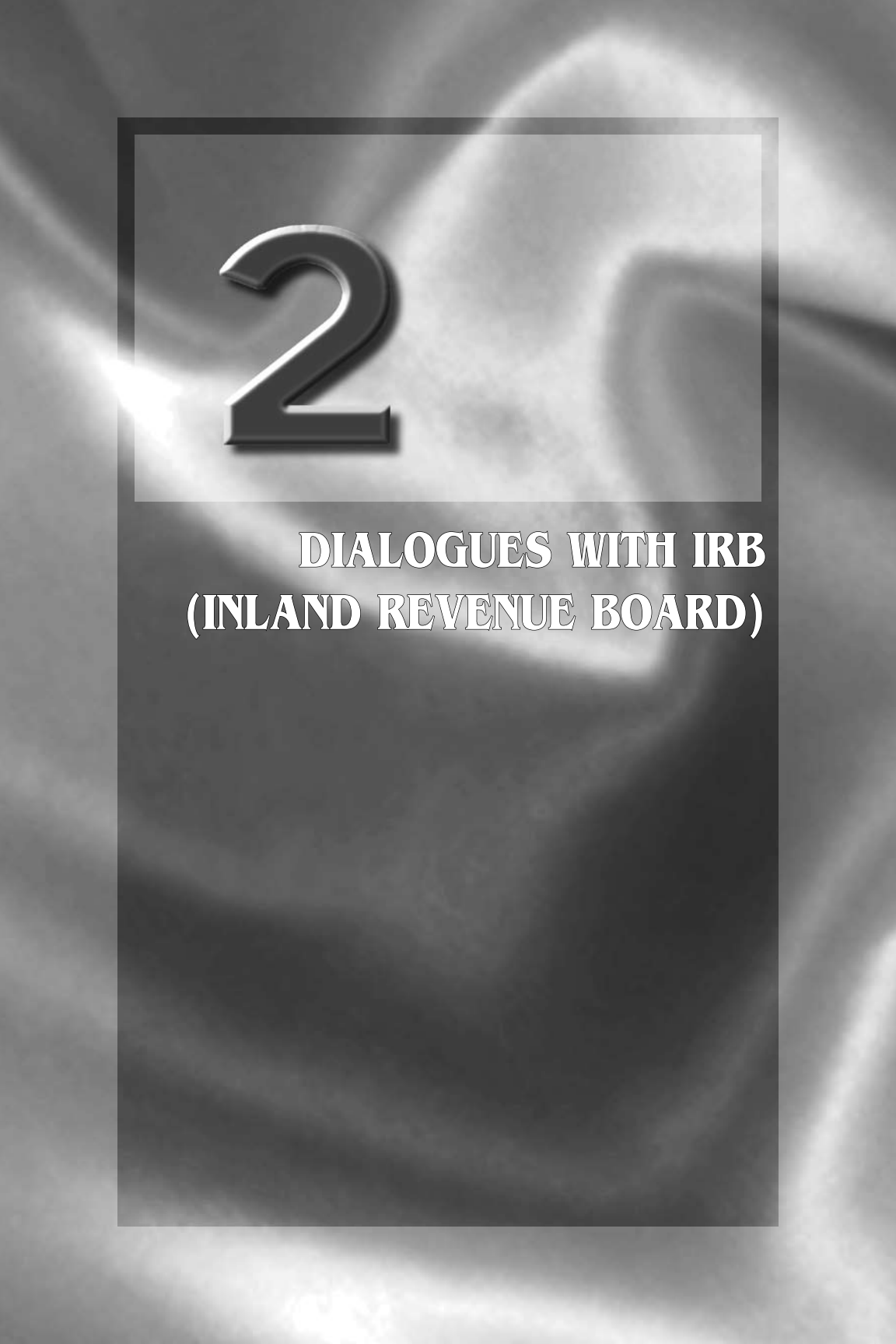
	Tax Investigation	Tax Audit
Objectives	IRB aims to deter against tax evasion, to ensure the correct amount of tax is collected, to enhance voluntary compliance with tax laws and regulations. Carried out in cases where it is suspected based on precise and definite evidence that the taxpayer is deliberately trying to avoid paying tax or has committed an act of wilful evasion under the abovementioned Acts.	IRB aims to ensure higher compliance rate under the Self Assessment System. Cases are selected through computer system based on risk analysis criteria, and also based on information received from various sources.

	Tax Investigation	Tax Audit
Types of tax audit and tax investigation	• **Civil tax investigation** - detection of tax evasion for the recovery of tax loss and imposition of heavy penalties. • **Criminal tax investigation** - focuses on gathering admissible evidence with a view towards prosecution and conviction of the tax evader.	• **Desk audit** - held at IRB's office, normally concerned with straight-forward issues and tax adjustments which are easily dealt with via correspondence and interview. Desk audit can turn into field audit if necessary. • **Field audit** - takes place at the taxpayer's premises and involves examination of the taxpayer's business records and non-business records (in the event where the business records are incomplete). Prior notice will be given.
Year of assessment covered	Where there is fraud, wilful default and negligence, the statutory limitation is not applicable.	Generally, an audit covers a period of one to three years of assessment. The period is extendable depending on the tax issues involved.
How is it carried out?	• The IRB will initiate a surprise visit to the taxpayer's business premises, personal residences, agent/ representative and various third parties premises. • During the visit, the investigation officer is required to follow certain procedure such as: 1) provide identification card, 2) explain the purpose of the visit,	• The taxpayer will be notified by the IRB through a letter of notification of audit 14 days prior to the audit visit. The taxpayer may request for a deferment with reasonable grounds. The notification will state the intended date of visit, the records required, the years of assessment covered, the names of the audit officers, as well as the expected timeframe required for the audit visit.

	Tax Investigation	Tax Audit
	3) inform the taxpayer of the documents needed, the period covered and the scope, 4) inform rights and responsibilities of taxpayer, and 5) provide reasonable time for taxpayer to collate the required documents. • The officer will conduct a search at all places visited, access, download and take possession of relevant information from all electronic storage media and also seize and take possession of the relevant books, records and documents. A written acknowledgement of the receipt of the documents will be given to the taxpayer. • Both business and individual records will be examined and any interviews and meetings should be conducted at the IRB's offices except during inspection visits.	• The audit normally starts off with an interview to obtain an overview of the taxpayer's business activity and to discuss the audit. • Examination of business records will be carried out and inspection of stock and equipment will be made. The officer will not search for or take possession of any records. • Document and records which need to be examined at the IRB's office (where taxpayer's office is not suitable or where copier facility is not available) will be taken with the consent of the taxpayer.
Time frame for completion	• **Civil investigation cases** - capital statement cases within **24 months** from the date of issue of notice and accounts cases within **18 months** from the date of commencement. • **Criminal tax investigation cases** - dependent upon court decisions.	On-site examination of records is 2 to 3 days, provided the circumstances require a longer timeframe. Audit will conclude within 3 months from the commencement of the audit.

Finalisation and Settlement	• **Civil investigation cases** - a written agreement will be entered into between the Director General of Inland Revenue (DGIR) and the taxpayer. A composite assessment will be issued. If no findings are made, a letter will be issued by the IRB. • **Criminal tax investigation cases** - when judgment has been duly granted by the court. Assessments will be issued upon judgments obtained	Audit finding report will be prepared for proposed tax adjustments. The reasons and rationale for such adjustments will be informed. The taxpayer is allowed 14 days from the date of notification to file an official objection if he disagrees with the proposed tax adjustments. If no objection is made, a notice of additional assessment will be issued.
Payment procedures	• All payment of back duty taxes shall be made to the DGIR. • Taxpayer is allowed installment payments plan of up to 60 months. Higher penalty be imposed on longer installment plan.	• All taxes and penalties shall be made to the DGIR. • Taxpayer may be allowed for installment payments plan, subject to the IRB's approval.
Appeals	Appeals must be made to the Special Commissioners of Income Tax within 30 days after the service of the notice of additional assessment. No appeal is allowed for a composite assessment.	Appeals must be made to the Special Commissioners of Income Tax within 30 days after the service of the notice of additional assessment.

Issued by : *Inland Revenue Board*
Issue date : *January* 2007



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DIALOGUES WITH IRB (INLAND REVENUE BOARD)

A Dialogue with the Revenue Management Department of Inland Revenue Board

1.0 A dialogue between the Revenue Management Department of Inland Revenue Board (IRB) and representatives of MIT, MIA, MICPA, MATA, MAICSA and MACS was held on April 4, 2007.

2.0 Processing of Dividend Vouchers in a Section 110 Refund Case

Taxpayers are required to submit the original dividend vouchers to the Processing Centre where there is a repayment arising from Section 110 credits. Members have reported that taxpayers are required to resubmit the original dividend vouchers again to the Cawangan Syarikat when a desk audit is carried out. The LHDNM responded in the previous dialogue that the resubmission occurred due to requests to expedite the repayment.

However, members have informed that the resubmission continues to occur even in cases where there has been no request to expedite.

This has also occurred for individuals where the Assessment Branch requests for the duplicate of the tax return, Form HK-3 and the dividend vouchers when processing the repayment.

The Institutes would like to highlight that the resubmission of tax returns, dividend vouchers, etc only causes further delay in processing the refund as the supporting documents requested for have been verified by the Processing Centre.

Alternatively, we would propose that only the original tax return be submitted to the Processing Centre whilst all the supporting documents (together with a duplicate copy of the tax return) be forwarded to the Cawangan Syarikat/Assessment Branch. This, however, would not be an efficient process.

JAWAPAN:

Perkara ini berlaku sekiranya kes diaudit untuk mengesahkan kesahihan baucar dividen atau di mana borang nyata,* Helaian Kerja HK-3 *dan baucar dividen yang dikemukakan adalah tidak lengkap, tidak teratur atau tidak seragam dengan amaun yang dilaporkan di dalam borang.

Untuk mempercepatkan proses pembayaran balik seksyen 110, LHDNM berharap pembayar cukai dan ejen cukai memberikan kerjasama dengan:-

(i) mengemukakan borang nyata yang lengkap dan betul (rujuk Lampiran A untuk Senarai Kesilapan-kesilapan Biasa Dalam Pengisian Borang B / BE) ;

(ii) menyenaraikan dividen yang diterima dalam Helaian Kerja HK-3 mengikut tarikh bayaran pada baucar;

(iii) mengemukakan baucar dividen asal dan bukannya salinan fotostat;

(iv) mengemukakan baucar dividen asal untuk tahun semasa (tidak termasuk baucar dividen yang dikecualikan cukai) ;

(v) menandakan 'Status Cukai' di belakang sampul sekiranya dihantar melalui pos biasa, poslaju, pos berdaftar atau syarikat kurier;

(vi) mengasing dan menyenaraikan kes-kes pembayaran balik (seksyen 110) serta menyatakan status cukainya di atas kelompok tersebut sekiranya dihantar secara berkelompok oleh ejen cukai;

(v) menyerahkan semua kes pembayaran balik seksyen 110 di Kaunter Khas No. 16, Tingkat 12, Pusat Pemprosesan Pandan Indah; dan

(vii) menghantar Helaian Kerja HK-3 dan baucar dividen asal bersama dengan pengesahan penerimaan borang secara e-filing oleh LHDNM ke Pusat Pemprosesan atau cawangan LHDNM yang terdekat sekiranya borang nyata dikemukakan melalui e-filing.

3.0 Assignment of Tax Officers

Members continue to inform that there are still desk audit cases which involve repayment or revised tax computations where no officers have been assigned or if one is assigned, no indication of when the case will be finalised. In the previous Operations Dialogue held on 10 April 2006, it was stated that audit cases are required to be finalised within 3 months.

The Institutes urge the LHDNM to expedite the finalisation of these cases, especially those that involve repayment cases.

JAWAPAN:

Perenggan 7.6.9 dalam Rangka Kerja Audit Cukai menetapkan bahawa kes audit cukai perlu diselesaikan dalam tempoh tiga (3) bulan dari permulaan audit.

4.0 Delay in Issuance of Receipt for Withholding Tax Payment

The Institutes continue to receive feedback from its members that withholding tax receipts are still issued on a date later than the actual date of payment for payments made by post. It is noted that the LHDNM has acknowledged in the Operations Dialogue of 10 April 2006 that such incidents occur due to the voluminous documents received via post. Any penalty imposed would be based on the date of receipt of the payment and not the receipt date.

Notwithstanding this, the Institutes urge the LHDNM to look into this matter as unnecessary time and costs are incurred by the taxpayer to resolve the discrepancy that occurs.

JAWAPAN:

Merujuk kepada Perkara 3.1 dalam Minit Mesyuarat Majlis Dialog Operasi Bil. 1/2006 yang bertarikh 10 April 2006, ejen cukai boleh mengemukakan maklumat kes yang terlibat sekiranya masih terdapat pembayar cukai yang dikenakan kenaikan cukai kerana kelewatan dalam meresitkan bayaran.

5.0 Appeal Procedure

According to the Minutes of the Operations Dialogue held on 16 February 2005, the LHDNM has stated that an appeal made via a letter (in place of a formal appeal or Form Q) can be submitted within 30 days from the notice of assessment. However, the validity of the appeal is being questioned by assessors in some branches as being inadequate or too general. We believe that an appeal in the form of a letter is intended to reduce administrative burden and not to jeopardize the validity of the appeal. If the letter of appeal is inadequate it is up to the LHDNM's officers to request for additional information.

The Institute would like to reconfirm that a letter of appeal submitted within 30 days from the date of a deemed assessment or notice of assessment is a valid appeal.

JAWAPAN:

Prosedur rayuan tidak berubah dan Ketetapan Umum Bil. 3/2001 masih berkuat kuasa. Perenggan 3.3 dan 3.4 dalam Ketetapan tersebut dirujuk.

Contoh surat rayuan terhadap taksiran yang diminta oleh pihak persatuan akan dikeluarkan kemudian.

6.0 Extension of Filing Deadline for March and December year-end cases

The Institutes welcome the flexibility allowed by the LHDNM for companies with March and December year-ends to submit their tax returns on or before 14 days after the stipulated deadline. This is due to the huge volume of tax returns that need to be filed for March and December-year-end companies in October and July respectively every year.

The Institutes would like to request that the above administrative concession for both March and December year-end companies should continue to apply in 2007 on an automatic basis without the need for the Institutes to apply for specific extensions i.e. no penalty will be imposed on taxpayers if the Forms C and R of the March and December year-end companies are received by the LHDNM on or before 14 November or 14 August respectively. This concession will also apply to payments of tax under Section 103(1) of the Income Tax Act, 1967.

Instead of applying for the concession annually, we would like to propose that the concession be granted for an indefinite period. Advance notice should be given to taxpayers if the concession is to be withdrawn.

JAWAPAN:

***Tempoh* 14 *hari masih diberikan sebagai konsesi bagi kes-kes tertentu.* (*Perkara* 2.14 *dalam* Minit *Mesyuarat* Majlis Dialog Operasi Bil. 1/2006 *bertarikh* 10 April 2006 *dirujuk.*) *Sebagai contoh, penalti tidak akan dikenakan sekiranya borang nyata diterima oleh* LHDNM *pada atau sebelum* 14 November 2007 *bagi syarikat yang menutup akaun pada* 31 Mac 2007 *atau* 14 Ogos 2008 *bagi syarikat yang menutup akaun pada* 31 Disember 2007.**

7.0 Timely response from the LHDNM to E-mail Enquiries

We are pleased to note that the LHDNM has provided different e-mail addresses for different types of enquiries on the website. Nevertheless, some members of the Institutes have reported that there is no response from the LHDNM with regard to their enquiries via email.

The Institutes hope that all enquiries via email can be responded to by the LHDNM within a specific time frame, say not more than 10 working days in resolving taxpayers' problems under the self assessment system.

JAWAPAN:

Mengikut amalan biasa, semua pertanyaan melalui e-mel akan dijawab dalam tempoh 7 hari dari tarikh penerimaannya. Walau bagaimanapun, semasa tempoh puncak iaitu minggu terakhir pengembalian Borang Nyata terutamanya bagi kes individu (minggu terakhir April), bilangan pertanyaan melalui e-mel naik dengan amat ketara hinggakan jawapan tidak dapat diberikan dalam tempoh yang ditetapkan mengikut garis panduan. Oleh itu, sekiranya pertanyaan memerlukan jawapan yang segera atau melibatkan tindakan di cawangan LHDNM yang tertentu, pertanyaan tersebut boleh dihantar ke alamat e-mel pegawai perhubungan awam (PRO) cawangan berkenaan (rujuk Lampiran B untuk senarai nama, alamat e-mel, nombor telefon dan nombor faks PRO cawangan-cawangan LHDNM).

8.0 Updating of Records

8.1 Statement of Accounts

The Institutes have been informed that its members are still receiving statements of account which are not updated and are incomplete. For example, the payment of the Schedular Tax Deductions (STD) notwithstanding that the Form PCB2(ii) has been forwarded to the Collections Branch. This has caused confusion and a lot of time and energy is wasted in trying to reconcile the amount due to/from the LHDNM.

To avoid resources being wasted unnecessarily, the Institutes urge the LHDNM to update their computer database on a timely basis so that taxpayers are able to receive the most current statements of account with a detailed breakdown.

JAWAPAN:

Pihak LHDNM mengambil perhatian terhadap isu ini.

8.2 Updating of System by Processing Centre

We have been informed by members who have called up the Collections Branch to enquire on the status of tax refunds for 2005 that they have been advised that the taxpayer's 2005 tax liability has not been reflected in the system. Therefore, any tax refund due cannot be processed. The Collections Branch advised to submit a photocopy of the tax return to the Assessment Branch (individual cases) directly to enable the officer to update the system manually.

The Institutes wish to confirm the status of the 2005 tax returns submitted in April and June 2006. The Institutes would also appreciate an update of the IRB's Processing Centre procedures and would like to enquire as to how such delays can be avoided.

JAWAPAN:

Perkara ini diambil perhatian oleh pihak* LHDNM. *Oleh sebab itu,* LHDNM *sentiasa menggalakkan penggunaan e-filing sejak ia diperkenalkan.

8.3 Updating of Records by Collections Branch

The Institutes have been informed of cases where instalments have been paid on time but penalties are still being imposed. There are also cases where the utilisation of tax credits have been approved but a refund cheques are still received.

The Institutes are of the view that the LHDNM should endeavour to update the records of taxpayers on a timely basis and not solely rely on the tax agents/taxpayers. The co-operation of the LHDNM, taxpayers and tax agents is essential for an efficient self-assessment system (SAS). Currently, any utilisation of tax credits requires the written application by the taxpayer or tax agent, as the case may be. The Institutes would like to seek the co-operation of the Collections Branch to update the taxpayers' records on a timely basis so that lesser time is used to reconcile the differences.

JAWAPAN:

Tindakan sedang diambil oleh pihak* LHDNM *untuk menyelesaikan masalah ini.

9.0 Revised Tax Computations

Members have informed that the processing of revised tax returns of companies which shows a nil liability/losses for the year are usually not carried out on an urgent basis. Such revision may occur when, for example, a tax computation is revised to take into account additional capital allowances claim.

The Institutes wish to highlight that the processing of all revised tax returns must be expedited.

JAWAPAN:

***Sila rujuk jawapan untuk Perkara* 3.0.**

10.0 Tax Refunds

The Institutes have been informed that, in some instances, the refund of excess STD or taxes paid by individual taxpayers as well as corporate taxpayers have been slow despite the relevant information having been provided to LHDNM. Some of the reasons for the delay include the inputting of data by Processing Centre, transfer of officers as well as lack of supporting information provided by the taxpayers.

The Institutes wish to seek clarification on the status of refunds and urge for the processing of refunds to be expedited. We also wish to know the status of the unprocessed tax returns for YAs 2004 and 2005 tax returns submitted earlier.

JAWAPAN:

Pihak* LHDNM *sentiasa mengambil tindakan yang proaktif dan mengkaji prosedur yang lebih baik supaya kes pembayaran balik dapat diproses dalam tempoh maksimum tiga* (3) *bulan dari tarikh borang nyata yang lengkap diterima.

Pembayar cukai perlu memastikan borang nyata yang dihantar itu diisi dengan lengkap. Penggunaan e-filing juga akan mempercepatkan pemprosesan borang.

11.0 Notice of Instalment Payment (CP205)

Upon receiving the completed CP204, the Notice of Instalment Payment (CP205) will be issued by LHDNM. The estimate of tax shall not be less than 85% of the revised estimate of tax payable for the immediately preceding year of assessment or if no revision was made, not less than 85% of the estimate of tax payable furnished. A lower than 85% estimate of tax payable may be requested but is subject to the approval of the LHDNM.

Members have reported that where a lower estimate is requested and subsequently rejected, the CP205 received is based on the estimate or revised estimate of tax payable for the immediately preceding year of assessment when in fact it should be 85% of the estimate or revised estimate of tax payable for the immediately preceding year of assessment.

The Institutes would like the LHNDM to allow taxpayers to ignore the "wrong" CP205 and proceed to pay based on the 85% threshold. The Institutes would also appreciate an assurance that no penalties are imposed in such situations.

JAWAPAN:

Mengikut peruntukan subseksyen* 107C(3) *Akta Cukai Pendapatan* 1967, *amaun anggaran cukai hendaklah sekurang-kurangnya* 85% *daripada anggaran cukai dipinda atau* 85% *daripada anggaran cukai jika tiada anggaran cukai dikemukakan bagi tahun taksiran sebelumnya.

Anggaran cukai yang kurang daripada* 85% *hanya dibenarkan sekiranya terdapat alasan yang kukuh dan menasabah.

Penghapusan kenaikan cukai adalah berdasarkan fakta kes.

12.0 Determination of Basis Period for Company Commencing Business

Members have reported that Notices of Estimated Assessments were issued under Section 90(3) with penalties imposed under Section 112(3) under the following scenario:-

For example, ABC Sdn Bhd has a 30 June financial year end but commenced business in May 2004. According to Public Ruling No. 6/2001, the basis periods and filing deadlines would be as follows:-

	Basis Period	**Filing Deadline**
Y/A 2004	May 2004 – 31 Dec 2004	31 Jan 2006
Y/A 2005	1 Jan 2005 – 31 Dec 2005	31 Jan 2007
Y/A 2006	1 Jul 2005 – 30 Jun 2006	31 Jan 2008

The Notice of Estimated Assessments issued in respect of Y/A 2005 was received in December 2006. As can be seen, the filing deadline for Y/A 2005 is on 31 January 2007 (i.e. within 7 months after the financial year end of 30 June 2005). Requests for a Reduced Assessment to rectify the error can only be processed with the submission of the audited accounts and tax computation. For obvious reasons, these documents would not be available at this juncture for submission. Hence, the taxpayers are required to settle the tax payable and penalty first.

The Institutes would like to propose that companies commencing business be allowed to follow their financial period as their basis period in order to further simplify the determination. This would avoid any misinterpretation on the part of the taxpayers and LHDNM. If our suggestion is followed, the basis periods would be as follows:-

	Proposed Basis Period
Y/A 2005	May 2004 – 30 Jun 2005
Y/A 2006	1 Jul 2005 – 30 Jun 2006

JAWAPAN:

Tempoh Perakaunan Syarikat	***Tarikh Pengemukaan Borang Nyata***
Mei 2004 - 30 Jun 2005	**31 Jan 2006**
1 Jul 2005 - 30 Jun 2006	**31 Jan 2007**

Mengikut Ketetapan Umum No. 7/2001, tempoh asas syarikat tersebut perlu diselaraskan seperti berikut:-

Tahun Taksiran	***Tempoh Asas***	***Tarikh Pengemukaan Borang Nyata***
2004	**Mei 2004 - 31 Dis 2004**	**31 Jan 2006**
2005	**1 Jan 2005 - 31 Dis 2005**	**31 Jan 2007**
2006	**1 Jul 2005 - 30 Jun 2006**	**31 Jan 2007**

Oleh itu, cadangan pihak persatuan supaya tempoh perakaunan diterima sebagai tempoh asas syarikat yang memulakan operasi tidak boleh dipertimbangkan.

Mengikut peruntukan seksyen 77A Akta Cukai Pendapatan 1967, syarikat dikehendaki memfailkan Borang Nyata dalam tempoh tujuh bulan dari tarikh berikutan tarikh tutup tempoh perakaunan yang merupakan tempoh asas bagi tahun taksiran berkenaan. Merujuk kepada contoh di atas, Borang Nyata bagi tahun taksiran 2005 dan 2006 hendaklah dikemukakan selewat-lewatnya pada 31 Januari 2007 (iaitu tujuh bulan dari 30 Jun 2006).

Pihak LHDNM tidak perlu membangkitkan taksiran anggaran di bawah seksyen 90(3) untuk tahun taksiran 2005 bagi syarikat tersebut kerana tempoh pengemukaan borang nyata tersebut masih belum tamat. Taksiran anggaran hanya boleh dibangkitkan selepas tarikh 31 Januari 2007.

13.0 Outstanding Taxes

13.1 Members have been receiving letters from the LHDNM indicating an outstanding amount which appears in the computer system. The letter is issued without appending the detailed tax payment position of the individual taxpayer and therefore, it is difficult to verify the amount. In addition, most of the time, the outstanding tax is due to STD that has not been fully updated notwithstanding that supporting documents (i.e. Form PCB2(ii) and receipts) have been submitted to the LHDNM earlier.

13.2 We note that some of the outstanding taxes relate to YA 2000 (PYB) and prior years. As the employer is only required to retain records for 7 years, it would be difficult for them to substantiate the STD made in 1995 to 1999.

The Institutes acknowledge that the detailed computations are available upon request from the relevant branches (as indicated in the Minutes of Operations Dialogue held on 10 April 2006). To reduce the unnecessary time spent in requesting and in order to be more efficient, the Institutes would like to suggest that the detailed computations, updated accordingly, be included in the letters sent to taxpayers.

JAWAPAN:

Perhatian telah diambil oleh pihak* LHDNM *terhadap perkara ini dan tindakan sewajarnya akan diambil.

14.0 Non-Issuance of Reduced Assessment or Additional Assessment

Members have informed that they have encountered instances where Notices of Reduced Assessments are not issued for successful appeals to the Director General and Notices of Additional Assessment not issued where additional tax liability has arisen. Instead, letters were issued by the Assessment Branch (for individuals) to collect the additional tax assessed and members were advised to deal directly with the Collections Branch to find out the amount of tax discharged (where reduced assessments are applicable).

The Institutes would like to express its concern that such incidents have occurred. The Institutes urge the LHDNM to look into this matter. Notices of Additional Assessments or Reduced Assessment should be rightfully issued for the above instances.

JAWAPAN:

Perkara ini diambil perhatian oleh* LHDNM *dan tindakan susulan akan diambil untuk menangani isu tersebut.

15.0 Leaver Cases

15.1 Resubmission of tax return

Our members have encountered instances where the officer has requested to resubmit the tax return using the 2004 return (SAS format) as the tax return submitted earlier (which used the 2003 tax return) was not under SAS format. (Note that, the 2004 SAS tax return format was only released by the LHDNM in 2005). This was to facilitate the issuance of the tax clearance letter.

The Institutes wish to highlight that taxpayers should not be required to resubmit the tax return. The resubmission will only cause further delay.

JAWAPAN:

Perenggan 3 dalam surat pejabat ini [No. Rujukan: LHDNM.01/32(S)/193/31] yang bertarikh 28 Mac 2007 telah dikeluarkan kepada pihak persatuan berkenaan 'Panduan Pengemukaan Borang Nyata Bagi Kes-Kes Pemberhentian Kerja dan Meninggalkan Negara'; dan salinannya telah diedarkan ke cawangan-cawangan LHDNM sebagai peringatan.

Bagi kes pemberhentian luar negara ('Foreign Leaver'), borang nyata tahun taksiran sebelumnya boleh digunakan dengan memotong tahun taksiran lama dan menulis tahun taksiran yang berkenaan misalnya potong tahun taksiran 2006 dan tulis 2007. Borang nyata yang telah lengkap diisi dan ditandatangani hendaklah dihantar ke cawangan LHDNM di mana fail dikendalikan supaya tindakan segera dapat diambil. Cawangan berkenaan akan membangkitkan taksiran dan mengeluarkan surat penyelesaian cukai kepada ejen cukai/majikan.

15.2 Delay in issuing tax clearance letter

The Assessment Branch takes more than one month to issue the tax clearance letters especially in cases where tax agents are not allowed to meet with the officer when submitting the final tax return for the "leaver" cases.

The Institutes are of the view that the issuance of clearance letters should be processed on a timely basis.

JAWAPAN:

Cawangan LHDNM akan mengeluarkan surat penyelesaian cukai dalam tempoh tiga puluh (30) hari dari tarikh cawangan LHDNM menerima notis pemberhentian kerja (CP22A / CP22C / CP21). Untuk mempercepatkan proses tersebut, adalah digalakkan supaya perkataan 'LEAVER' dicapkan pada ruang kosong di sudut atas sebelah kanan borang berkenaan.

15.3 Leaver prior to April 2007

Our members were given to understand that the tax returns can be submitted directly to the Assessment Branch in order to expedite the issuance of the tax clearance. However, problems were encountered in April 2006 where some of the branches refused to accept the tax returns for YAs 2005 and 2006. They advised our members to submit the tax returns to the Processing Centre and to forward a duplicate copy to them.

We would like to seek the LHDNM's confirmation as to the proper procedure with regard to the filing of the tax returns for leavers prior to April 2007.

JAWAPAN:

***Sila rujuk jawapan untuk* Perkara 15.1.**

16.0 STD on Perquisites

Pursuant to Public Ruling No. 1/2006, in the case where the salary of the employee is not sufficient to absorb the monthly STD on the perquisites (such as club memberships, tuition fees, scholarships, etc), the employer has to obtain approval of the Collection Branch to allow the employee to pay by installments. In practice, under the Employment Act 1955, an employer must not deduct more than 50% from the employee's remuneration. Further, an employee may have his own commitment in repaying loans from a financial institution, etc.

The Institutes wish to highlight the administrative burden involved as under such circumstances, there is a need by the employer to know how the installment amount is determined. In addition, the employee's consent may be required as the employer should also consider the financial position of the employee and the employee would not agree to such deductions as he may have heavy financial commitments.

In order to reduce the administrative burden, the Institutes wish to suggest that perquisites not be subject to STD. Alternatively, the LHDNM could consider allowing the STD to be payable in installments on the total perquisites received. For example, by the end of December 2006, the employer should know the total amount of perquisites received by each employee for 2006. Only then, the employer will apply for the installment scheme beginning from January 2007.

JAWAPAN:

Ketetapan* Umum No. 1/2006 *masih berkuat kuasa.

Walau bagaimanapun, cadangan daripada pihak persatuan/ institut mengenai perkara tersebut adalah dialu-alukan.

17.0 Passport Certification prior to the Expatriates' Cessation of Employment.

Some of the expatriate clients of our members are based outside Kuala Lumpur. In order to facilitate the passport certification process, the expatriates' passport would be forwarded to our members who are the tax agents. Our members encountered

problems in certifying the expatriates' passport (whose tax file is located in the outstation branch) as recently the IRB branches within KL refuse to do the passport certification (even though the tax agents have provided them with the complete set of documents) except in the presence of the expatriates. In addition, we have been informed that the IRB officers will not verify the passport without the Form CP21. There would be instances where the passport needs to be verified prior to the expatriate leaving the country. For example, when the expatriate renews his passport, the expired passport will be retained by the respective embassies. Therefore, there is a need to verify the residence status based on the old passport before it is surrendered.

The Institutes would appreciate it if the above issues can be looked into. We see no basis/rationale to insist that the expatriate must be at the IRB branch in person. We are also of the view that the verification of the passports of expatriates who are renewing their passports should be carried out by the IRB.

JAWAPAN:

Bagi pembayar cukai yang mempunyai pas pekerjaan, tempoh sahlaku pas pekerjaan boleh diambil sebagai bukti beliau berada di Malaysia. Sekiranya tiada pas pekerjaan, pengesahan pasport masih boleh diamalkan.

Bagi tujuan cukai, taraf mastautin boleh ditentukan oleh cawangan yang mengendalikan fail pembayar cukai berkenaan sama ada pembayar cukai tersebut hadir ataupun diwakili oleh ejen cukai, dengan syarat maklumat yang diperlukan adalah lengkap.

18.0 STD Audit

Members have informed that insufficient time has been provided by the IRB officers to produce the required documents such as list of workers, payroll, salary vouchers, EA forms, Form 49, minutes of AGM, etc. Generally, the time allowed/granted is 7 days. However, there are instances where the officers visit the premises immediately after the telephone conversation. In addition, requests for an extension of time have also been rejected.

The Institutes would like to request that taxpayers be allowed a timeframe of 14 to 30 days to produce the required documents. Certain documents are not kept by the employers. Companies should also be allowed to request for an extension of time, if necessary.

JAWAPAN:

Di bawah Perenggan 7.2 dalam Rangka Kerja Audit Cukai, pembayar cukai/majikan yang dipilih untuk diaudit akan dimaklumkan melalui surat pemberitahuan lawatan audit. Tempoh surat pemberitahuan dikeluarkan adalah 14 hari dari tarikh lawatan. Pembayar cukai/majikan boleh membuat permohonan untuk menangguhkan tarikh lawatan audit atas sebab-sebab yang tidak dapat dielakkan dan yang munasabah. Walau bagaimanapun, sekiranya LHDNM memerlukan tempoh yang lebih pendek ianya boleh ditetapkan dengan persetujuan pembayar cukai/majikan. Pengesahan lawatan akan dimaklumkan melalui telefon terlebih dahulu jika perlu.

19.0 Tax Installments on Additional Tax Payable after Tax Audit

Where an additional assessment has been raised as a result of a tax audit and the taxpayer has made a request to settle the additional tax by installments to the Collection Branch, the Director General under Section 103(7) of the Act may allow the tax to be paid by installments without any penalty being imposed.

However, the Institutes understand from its members that in practice the Collection Branch has insisted on imposing a penalty on the installments paid.

We are of the view that the practice of imposing penalty for installment payments granted following an application made by the taxpayer is incorrect as it is not provided for under Section 103(7) and would request that the imposition of such penalty for such cases be stopped.

JAWAPAN:

Mengikut Perenggan 12.3 dalam Rangka Kerja Audit Cukai, seseorang pembayar cukai yang tidak berkemampuan boleh memohon kepada Pengarah Cawangan LHDNM yang berkenaan untuk kelulusan bagi menjelaskan secara ansuran, cukai dan penalti yang berbangkit daripada pelarasan audit. Kenaikan cukai lewat bayar akan dikenakan ke atas baki cukai yang tidak dibayar sekiranya pembayar cukai gagal mematuhi peraturan bayaran yang telah dipersetujui.

20.0 Completion of Form C and Supporting Worksheets

20.1 Item E11 of the Form C for YA 2006

Item E11 – Total capital allowance on assets acquired in the basis period

Clarification has been obtained from the Processing Centre that item E11 includes only capital allowance for assets purchased during the current basis period. It has also been clarified that E11 is to exclude capital allowance on capital repayments in respect of assets acquired via hire-purchase in the preceding year(s) as well as assets acquired in the prior year but only put into use in the current basis period.

Members have reported that the above definition has not only created additional reconciliation work for the taxpayers but that it also does not serve any purpose.

The Institutes would like to clarify the purpose of item E11. We are of the opinion that for the purpose of tracking the amount of unutilised capital allowances to be carried forward, a more meaningful definition would be to disclose the total current year capital allowances, which includes capital allowance on new qualifying expenditure ("QE"), existing QE, as well as capital allowance on capital repayments of hire purchase assets.

JAWAPAN:

Perkara tersebut telah diambil perhatian oleh pihak* LHDNM.** ***Akan tetapi, untuk mengekalkan keseragaman bagi* Tahun Taksiran 2006,** ***maka keterangan bagi* Perkara E11 *dalam* Buku Panduan Borang C *di laman web* LHDNM *hanya akan dipinda mulai* Tahun Taksiran 2007 *supaya mengambil kira juga elaun modal untuk aset-aset yang diperoleh secara sewa-beli dan pajakan kewangan.

20.2 Item XIII of the Form C for YA 2006

Item XIII – Substantial change in shareholding

Based on the Buku Panduan Borang C 2006, "perubahan besar dalam pemegang saham dikatakan berlaku apabila **lebih daripada 50%** pemegang saham pada hari terakhir tempoh asas…..**tidak sama** dengan pemegang saham pada hari pertama……."

Based on the reading of Section 44(5A), the Institutes wish to inform that even if there is a change in 50% of the shareholders, Section 44(5A) would apply i.e. any unabsorbed losses or capital allowances would not be eligible to be carried forward.

JAWAPAN:

Keterangan asal untuk Perkara XIII dalam Buku Panduan Borang C 2006 di laman web telah didapati tidak jelas dan menimbulkan kemusykilan. Oleh itu, keterangan tersebut telah pun dipinda supaya merangkumi perubahan dalam pemegangan saham sebanyak 50% dan bukan hanya perubahan yang melebihi 50% sahaja.

Keterangan Asal:

Perubahan besar dalam pemegangan saham dikatakan berlaku sekiranya lebih daripada 50% pemegangan saham pada hari terakhir tempoh asas bagi tahun taksiran dalam mana kerugian larasan dan elaun modal itu ditentukan adalah tidak sama dengan pemegangan saham pada hari pertama tempoh asas bagi tahun taksiran dalam mana kerugian larasan dan elaun modal itu boleh dibenarkan sebagai potongan.

Keterangan Selepas Dipinda:

Perubahan besar dalam pemegangan saham dikatakan tidak berlaku sekiranya lebih daripada 50% pemegangan saham pada hari terakhir tempoh asas bagi tahun taksiran dalam mana kerugian larasan dan elaun modal itu ditentukan adalah sama dengan pemegangan saham pada hari pertama tempoh asas bagi tahun taksiran dalam mana kerugian larasan dan elaun modal itu boleh dibenarkan sebagai potongan.

20.3 Worksheet HK-F2 – Pelarasan Kerugian bagi Perniagaan dan Perkongsian yang Menikmati Insentif

The Institutes wish to highlight that the calculation of the amount of losses brought forward (item A) should be adjusted to exclude the losses ascertained under Section 44(5A) where the shareholders of the company are not substantially the same. The adjustment was made in Worksheet HK-F1 but not reflected in other relevant worksheets such as HK-F2. In addition, the amount of capital allowance brought forward should also be adjusted accordingly in the relevant schedules.

JAWAPAN:

Secara amnya, Helaian Kerja HK-F1 adalah untuk kegunaan syarikat yang tidak menikmati insentif sementara Helaian Kerja HK-F2 pula untuk kegunaan syarikat yang menikmati insentif.

Sebagai contoh, di mana sesebuah syarikat mengalami perubahan sebahagian besar dalam pemegangan syer ('substantial change'), kerugian perniagaan biasa (misalnya kerugian bukan perintis)

dan elaun syarikat tersebut tidak boleh dihantar hadapan dan seterusnya tidak boleh diserap dalam tahun taksiran berikutnya. Dalam keadaan ini, Helaian Kerja* HK-F1 *boleh digunakan. Akan tetapi untuk perniagaan yang menikmati insentif seperti Elaun Pelaburan Semula dan Elaun Cukai Pelaburan, sekatan peruntukan 'substantial change' ini tidak terpakai dan Helaian Kerja* HK-F2 *boleh digunakan. Walau bagaimanapun, Helaian-helaian Kerja* HK-F1 *dan* HK-F2 *hanya disediakan sebagai panduan sahaja dan tidak semestinya memenuhi kehendak kesemua situasi perniagaan.

20.4 Worksheet HK-PC13 - Pengiraan Pendapatan Berkanun bagi Syarikat Pusat Pengedaran Serantau (RDC)/Syarikat Pusat Perolehan Antarabangsa (IPC)

The Institutes wish to highlight the following issues:-

(a) In the Worksheet HK-PC13, taxpayers are required to select either "Jualan Eksport Penghantaran Luaran" or "Jualan Tempatan".

The Institutes would like to enquire why taxpayers are required to select only one category i.e. either export sales or local sales.

(b) According to the Income Tax (Exemption) (No. 41) Order 2005 and Income Tax (Exemption) (No. 42) Order 2005, the amount of statutory income exempted is the sum of (i) all income from the qualifying activities in respect of its direct export sales (ii) a part of the income from qualifying activities from drop shipment export sales and (iii) a part of the income from qualifying activities from local sales.

The Institutes wish to highlight that the income from qualifying activities in respect of its direct export sales is not reflected in Worksheet HK-PC13.

JAWAPAN:

LHDNM *bersetuju dan Helaian Kerja* HK-PC13 *dalam Buku Panduan Borang* C 2006 *akan dipinda selaras dengan maksud:-*

(i) **Perintah Cukai Pendapatan (Pengecualian) (No. 41) 2005 [P.U. (A) 308/2005] *untuk Syarikat Pusat Pengedaran Serantau***

(ii) **Perintah Cukai Pendapatan (Pengecualian) (No. 42) 2005 [P.U. (A) 309/2005] *untuk Syarikat Pusat Perolehan Antarabangsa***

21.0 Implementation of E-filing

21.1 Review of e-filing Procedures

The Institutes acknowledge the advantage of e-filing but however, the system has not been very effective. Some of the concerns include the hardware requirements, the obtaining of the PIN numbers for clients, fear of confidentiality, etc.

The Institutes wish to suggest that tax agents be allowed to click the return as preparers of the tax returns rather than clicking under the taxpayer's ID. This would also minimise the independence and risks issues for the tax agents. A master ID could also be given to each tax agent to submit the tax returns for their clients. This would eliminate the problem of obtaining individual PIN numbers for expatriate clients (which may be many) especially when these PIN numbers become invalid when they leave the country.

Also, a pilot trial run could be conducted with some tax agents to test the system effectively. Individual taxpayers should be able to download the PIN number online without the need to visit the IRB branches.

21.2 PIN Number for expatriates

Our members have reported problems in activating the PIN number allocated for expatriates. This is due to the new passport numbers not being updated in the LHDNM's system. Consequently, tax agents are required to go to the LHDNM to verify the passport number and to ensure that the information in the computer system has been fully updated.

The Institutes hope the LHDNM would endeavour to update its system on a timely basis, say within 2 days after notification of a change in the passport numbers.

JAWAPAN BAGI ISU NO. 21.1 & 21.2:

Pihak* LHDNM *telah membenarkan ejen cukai untuk memohon nombor* PIN *bagi pihak pelanggan mereka, dengan syarat mereka hendaklah mengikut prosedur seperti berikut:-

(i) ***Permohonan boleh dikemukakan ke*:**

- ***(a)*** ***Cawangan-cawangan* LHDNM *yang berdekatan*;**
- ***(b)*** ***Pusat Khidmat Pelanggan, Jabatan Pemprosesan, Pandan Indah; atau***
- ***(c)*** ***Unit Pembangunan Sistem Hasil, Bahagian Operasi, Jabatan Pengurusan Hasil.***

(*ii*) E*jen cukai hendaklah menyenaraikan maklumat pelanggan mereka dengan menyatakan:-*

(*a*) N*ama penuh*;

(*b*) N*ombor kad pengenalan (baru dan lama) / nombor pasport*;

(*c*) N*ombor rujukan cukai.*

(*iii*) P*ermohonan hendaklah disertakan dengan:-*

(*a*) S*urat kebenaran memohon nombor* PIN *e-Filing daripada pembayar cukai; atau*

(*b*) S*urat lantikan sebagai ejen cukai yang menyatakan ejen cukai dilantik untuk mengendalikan urusan percukaian termasuk memfailkan borang; dan*

(*c*) P*erakuan bahawa ejen cukai akan bertanggung jawab sepenuhnya ke atas keselamatan nombor* PIN *dan sijil digital pelanggannya.*

21.3 Representatives from Collection Branch and Processing Centre at Dialogues

We would like to suggest that besides the Heads of the Collection Branch and Processing Centre, perhaps some officers who are involved in the day-to-day matters in relation to the issues raised above be invited to attend the dialogue.

JAWAPAN:

Tiada isu.

22.0 Revised Estimate of Tax Payable for Year of Assessment 2007 for the Flood Affected Taxpayers

We commend the Government for allowing businesses that are affected by the recent floods certain relaxation in the submission of tax returns. Such businesses are allowed to declare their estimate of tax payable for the year of assessment 2007 at less than eighty-five per cent of the revised estimate of tax payable for the immediately preceding year of assessment or if no revised estimate is furnished, it could be less than eighty-five per cent the estimate of tax payable for the immediately preceding year of assessment. However, the estimate of tax payable shall not be less than fifteen per cent of the revised estimate tax payable for the preceding year of assessment or the estimate of tax payable for the preceding year of assessment. In addition, the flood-hit traders would be allowed to pay their taxes in nine installments instead of the usual six installments. For bigger companies,

co-operatives and trust organizations, they would be allowed to pay their taxes up to 18 installments instead of the usual 12 installments.

The Institutes would like to seek clarification pertaining to cases where the taxpayers have already submitted their estimate of tax payable for 2007 before the announcement by the Government. Would these taxpayers be required to pay higher taxes for 6 installments based on the estimate submitted in accordance with the current provisions, before they are allowed to submit the revised estimate in the 6th month of their accounting period?

The Institutes would like to suggest that the Inland Revenue Board (IRB) announce the details of the concession to facilitate the taxpayers whose businesses are affected by the floods, to understand and comply with IRB's requirements. In addition, the Institutes would like to suggest that the IRB allow those taxpayers who have already submitted their estimate of tax payable prior to the announcement by the Government on the above concession, be accorded the same relaxation as those who have yet to submit their estimate of tax payable.

The Institutes would also like to seek IRB's clarification on whether the affected taxpayers would be allowed to revise their estimate of tax payable immediately to lessen their cash flow burden.

JAWAPAN:

Peniaga yang mengalami kerosakan premis dan barang-barang perniagaan semasa banjir diberikan kelonggaran untuk mengurangkan anggaran cukai yang dibayar bagi tahun 2007 dan/atau melanjutkan tempoh ansuran bayaran cukai berhubung dengan seksyen 107B dan 107C.

Borang permohonan perlu disertakan dengan pengesahan bertulis dari pegawai daerah/pihak berkuasa tempatan/polis/penghulu mengenai kerosakan premis dan barang-barang perniagaan akibat banjir. Borang permohonan CP204X (untuk syarikat/koperasi/badan amanah) dan CP500X (untuk selain daripada syarikat/koperasi/badan amanah) boleh diperolehi daripada cawangan LHDNM.

Bilangan ansuran tambahan yang boleh dipohon adalah maksimum 6 ansuran tambahan bagi kes syarikat, koperasi dan badan amanah dan maksimum 3 ansuran tambahan bagi kes selain syarikat, koperasi dan badan amanah. Amaun ansuran bulanan yang perlu dibayar hendaklah sama rata mengikut bilangan ansuran yang ada.

***Permohonan hendaklah dikemukakan selewat-lewatnya pada* 15 Mac 2007. *Walau bagaimanapun, mangsa banjir boleh mengemukakan rayuan ke* Pusat Pemprosesan (*untuk syarikat/koperasi/badan amanah*) *atau ke cawangan* LHDNM (*untuk selain daripada syarikat/koperasi/badan amanah*).**

23.0 Loss of Records Due to Flood

Many businesses in the flood affected areas may experience loss or damage of their accounting and other records. These taxpayers would encounter difficulty in computing the chargeable income and the actual amount of tax payable for the year of assessment 2006.

The Institutes would like to seek clarification from the IRB on the possible solutions with regard to those flood affected taxpayers who are unable to submit their tax returns in accordance with sections 77 and 77A of the Income Tax Act due to loss of accounting and other relevant records.

JAWAPAN:

Borang nyata masih perlu dikemukakan walaupun kehilangan rekod.

24.0 Isu daripada MAICSA

24.1 Tax Treatment of Legal and Professional Expenses Public Ruling No.6/2006 dated 6 July 2006 Effective from Year of Assessment 2006

Under item 6.3 of IRB Public Ruling No. 6/2006, titled 'Annual Corporate Filings and Meeting Expenses', secretarial fees and annual general meeting expenses were classified as non-deductible legal and professional expenses which will not qualify for deduction.

There is discrepancy between the title given to item 6.3 'annual corporate filings' and sub-item 'secretarial fees'. Annual corporate filings is more applicable to filing fees for lodgement of annual returns which are RM150 per annum for a private limited company or RM350 per annum for a public company. Meanwhile secretarial fees are fees paid to the named company secretary of the company who provide secretarial and related professional services that results by virtue of the person being named as company secretary pursuant to Section 139 of the Companies Act, 1965. Secretarial fees are deemed to be part of the managerial expenses of a company, without which the company would not be able to exist and therefore directly contributes to the generation of income by the company.

On the other hand, by treating the annual general meeting expenses as non-deductible expenses will reduce the role of shareholders in corporate governance since it will becomes a burden to shareholders as net profit after tax will be lower resulting in to a lesser amount available for distribution.

It is proposed that 'annual corporate filings expenses' and 'secretarial fees' to be considered as two separate items.

Annual corporate filings expenses are expenses which are statutorily required under the Companies Act, 1965 and since the annual returns need to be lodged together with the prescribed fees, failure to do so will subject to breach of the requirements under the Companies Act, 1965.

Secretarial fees should qualify for tax deduction on the following grounds:-

a) Under item 5.3 of the Ruling, accountancy fee and audit fee are both tax deductible. Accountancy fee appears to be a concession while audit fee has been gazetted as statutory rule.

b) Secretarial services provided by a company secretary to a company are very similar to accounting and auditing services provided by accountants. A company is statutorily required under the Companies Act, 1965 to appoint a company secretary for the purpose of inter-alia maintaining the statutory books/registers and records of the company and compliance of the provisions of the Companies Act, 1965.

c) It is not business friendly to disallow secretarial fee as tax deduction.

d) Secretarial fees are recognised as a permitted expense under Section 60F(2)(d) of the Income Tax Act 1967 in relation to an investment company.

The annual general meetings are the platform for members of a company to attend and ensure the Board members are accountable for their actions and investment and without the support of the members of the company, the company's business will not be successful.

As such, it is fair and appropriate to classify annual corporate filings expenses, secretarial fees and annual general meeting expenses as items which are deductible as they have been all along.

JAWAPAN:

Isu ini berkait dengan polisi perundangan.

LAMPIRAN A

SENARAI KESILAPAN-KESILAPAN BIASA DALAM PENGISIAN BORANG BE / B

BIL.	BAHAGIAN DALAM BORANG BE / B 2005	KESILAPAN BIASA	
1	**Bahagian Maklumat Asas:**	(a)	Bahagian ini tidak diisi dengan lengkap. Terdapat pembayar cukai yang tidak mengisi nama dan maklumat pengenalan diri tetapi sebaliknya melampirkan penyata pendapatan (Borang EA / EC) untuk dilengkapkan oleh pegawai LHDNM.
		(b)	No. rujukan cukai tidak/silap diisi. Ia harus diisi mengikut format seperti pada surat iringan.
2	**Bahagian A: Maklumat Individu**	(a)	Ruang A2 (Negara Mastautin/ Domisil) - Pembayar cukai sepatutnya mengisi kod negara dan bukannya "bilangan" mengikut susunan negara pada senarai dalam Nota Penerangan.
		(b)	Ruang A7 (Jenis Taksiran) tidak/ silap diisi dan didapati tidak selaras dengan pengiraan cukai.
		(c)	Pembayar cukai dinasihatkan mengisi ruang A16 (No. Telefon)/ ruang A17 (No. Telefon Majikan) supaya boleh dihubungi sekiranya terdapat kesilapan mengisi borang.
3	**Bahagian B: Maklumat Suami/Isteri**		Bahagian ini tidak diisi walaupun ruang A4 di Bahagian A menunjukkan status "kahwin" dan pelepasan suami / isteri dituntut di Bahagian D. Terdapat pembayar cukai yang mengisi maklumat diri sendiri di Bahagian ini.

BIL.	BAHAGIAN DALAM BORANG BE / B 2005	KESILAPAN BIASA	
4	**Bahagian C: Pendapatan Berkanun dan Jumlah Pendapatan**	(a)	Amaun pendapatan berserta nilai sen diisi. Terdapat juga petak tambahan dilukis untuk memasukkan nilai sen.
		(b)	Ruang "Jumlah" tidak diisi.
		(c)	Ruang "Dividen" tidak diisi tetapi pelepasan seksyen 110 (dividen) dituntut atau sebaliknya. Terdapat juga pembayar cukai mengisi dividen dan tuntutan seksyen 110 tahun taksiran ke hadapan dalam tahun semasa.
		(d)	Pembayar cukai memilih "Taksiran Bersama" di ruang A7 Bahagian A tetapi ruang C17 / C18 (Borang BE) atau ruang C33 / C34 (Borang B) tidak dilengkapkan.
		(e)	Bahagian C tidak dilengkapkan tetapi Borang EA / EC dilampirkan.
5	**Bahagian D: Pelepasan dan Pendapatan Bercukai**	(a)	Bahagian ini tidak dilengkapkan tetapi resit-resit tuntutan disertakan.
		(b)	Semua pelepasan dituntut pada had maksima atau melebihi had.
		(c)	Pembayar cukai mengisi kedua-dua ruang pelepasan anak di bawah kadar 100% dan 50%. Dalam kes taksiran berasingan, kedua-dua suami dan isteri menuntut jumlah pelepasan anak yang sama.
		(d)	Pelbagai pelepasan lain dituntut di ruang D18.
		(e)	Silap pengiraan "Jumlah Pelepasan" di ruang D19.

BIL.	BAHAGIAN DALAM BORANG BE / B 2005	KESILAPAN BIASA	
6	**Bahagian E: Cukai Kena Bayar**	(a)	Bahagian ini tidak dilengkapkan.
		(b)	Silap kadar cukai pendapatan dalam pengiraan.
		(c)	Rebat dituntut walaupun tidak layak. Terdapat pembayar cukai yang menganggap lebihan rebat sebagai cukai terlebih bayar.
7	**Bahagian F: Rumusan Cukai dan Bayaran**	(a)	Bahagian ini tidak diisi.
		(b)	Lebihan rebat dituntut sebagai cukai terlebih bayar.
		(c)	Pembayar cukai mengisi jumlah PCB termasuk jumlah potongan CP38.
8	**Bahagian G: Pendapatan Tahun Kebelakangan**		Tidak dilaporkan walaupun terdapat dalam Borang EA / EC.
9	**Bahagian Akuan:**	(a)	Bahagian ini tidak dilengkapkan.
		(b)	Pembayar cukai tandatangan tetapi tidak mengisi "nama", "no. kad pengenalan" dan "tarikh" atau sebaliknya.
		(c)	Cap jari digunakan sebagai ganti tandatangan.
10	**Kesilapan Umum:**	(a)	Sebahagian borang terdiri daripada borang asal dan sebahagian lagi borang fotostat.
		(b)	Muka surat borang yang dikemukakan tidak mencukupi.
		(c)	Borang fotostat diisi dan dihantar kepada LHDNM.
		(d)	Menggunakan borang nyata tahun kebelakangan untuk melaporkan pendapatan tahun semasa.

BIL.	BAHAGIAN DALAM BORANG BE / B 2005	KESILAPAN BIASA	
		(e)	Menghantar borang B yang berasingan untuk jenis perniagaan yang berbeza.
		(f)	Menghantar dua borang misalnya Borang BE untuk kes tidak kena cukai dan Borang B untuk kes kena cukai.
		(g)	Mengisi jenis borang yang salah.
		(h)	Tersilap mengisi no. rujukan pembayar cukai lain.
		(i)	"Liquid paper" digunakan untuk membuat pembetulan.
		(j)	Borang diisi dan dokumen/lampiran disertakan. Terdapat juga lampiran disertakan tetapi borang tidak diisi.
		(k)	Pengiraan cukai tidak diselesaikan.
		(l)	Baucer dividen tidak disertakan untuk kes pembayaran balik.
		(m)	Garisan melintang dibuat merentasi ruang-ruang yang tidak berkenaan.

LAMPIRAN B

SENARAI PEGAWAI PERHUBUNGAN AWAM LHDNM 2007

Bil	Cawangan	Pegawai Perhubungan Awam	No. Telefon	e-mel	No. Faks
1	Ibu Pejabat	Puan Najlah bt Ishak	03-62031380 / 03-62012344	najlah@hasil.org.my	03-62012434
2	Johor Bahru	Encik Nor'azam bin Sulaiman	07-2359545 / 07-2359510 ext 341	norazam@hasil.org.my	07-2344844
3	Melaka	Puan Hayati bt Zahari	06-2327737	hayati.zahari@hasil.org.my	06-2327729
4	Seremban	Puan Muna Liza bt Janis	06-7665080	munaliza@hasil.org.my	06-7625339
5	Taiping	Encik Tasman bin Ismail	05-8041922 / 05-8072666 ext 211	tasmanismail@hasil.org.my	05-8086118
6	Ipoh	Encik Ismail bin Ibrahim	05-5475732 / 05-5475522 ext 114	ismailibrahim@hasil.org.my	05-5475668
7	Teluk Intan	Puan Radziah bt Selamat	05-6211949 / 05-62213122 ext 221	radziahselamat@hasil.org.my	05-6213482
8	Kota Bharu	Puan Norizan bt. Othman	09-7431310 / 09-7482103 ext 133	norizanothman@hasilnet.org.my	09-7487131
9	Alor Setar	Puan Sabariah bt. Abdul Rahman	04-7400122	sabariah@hasil.org.my	04-7340642
10	Pulau Pinang	Puan Suriyanti bt Esa	04-2620280 / 04-2612255 ext 234	suriyanti@hasil.org.my	04-2628406
11	Kuantan	Encik Azudin bin Mat Saleh	09-5141935/09-5163000 ext 400	azudin@hasil.org.my	09-5142067
12	T. Bermastautin	Puan Norkemala bt Yahya	03-62092696	norkemala@hasil.org.my	03-62019745
13	Jalan Duta	Puan Shimo Raman	03-62031558 / 03-62091000 ext 1179	shimo@hasil.org.my	03-62016584
14	Kluang	Encik Kamaruzaman bin Mohamad	07-7724644 / 07-7714696 ext 155	kamaruzaman mohamad@hasil.org.my	07-7723133
15	Caw. Cukai Korporat	Cik Nor Haida bt Abdul Hamid	03-62017537/03-62092558	norhaida@hasil.org.my	03- 62017542
16	K. Terengganu	Encik Wan Abdullah bin Wan Abd. Rahman	09-6242133 / 09-6203238	-	09-6227829
17	Shah Alam	Encik Mohamad Zaki bin Md. Jani	03-55157154 / 55103202 ext 154	mohamadzaki@hasil.org.my	03-55127072
18	Raub	Encik Noor Azman bin Salleh	09-3515848 / 09-3515888 ext. 5848	n.azman@hasil.org.my	09-3558501
19	Kangar	Encik Mohd Affendi bin Ayub	04-9777048 / 04-9764811ext. 214		04-9765798
20	K.L. Bandar	Encik Mohamad Razli bin Mohamad Ali	03-22741233 / 03-22633762	razli@hasil.org.my	03-22739415
21	Bukit Mertajam	Puan Zabaidah bt Mohamed Said	04-5306518 / 04-5307010 ext 1091	zabaidah@hasil.org.my	04-5307024
22	Klang	Puan Neazlin bt Radzuan	03-33418258 / 03-33449770 ext 135	neazlin@hasil.org.my	03-33449541
23	Pungutan, K.L.	Puan Roshida bt Daud	03-62012648 / 03-62091000 ext 3519	roshida@hasil.org.my	03-62014570
24	Muar	Tuan Hj. Hamzah bin Baba	06-9556070/06-9527000 ext 166	hamzah@hasil.org	06-9536814
25	Cheras	Encik Amir Zainuddin bin Abdul Hamid	03-92829451/ 92848022 ext 402	amir@hasil.org.my	03-92864595
26	Wangsa Maju	Cik Salma bt Abd Karim	03-41436713 / 03-41426022 ext 148	salma@hasilnet.org.my	03-41427022
27	Sungai Petani	Cik Sahrimah bt Md. Zin	04-4258771/04-4235677 ext 409	sahrimah@hasil.org.my	04-4231905
28	Petaling Jaya	Puan Noorhaya bt Ibrahim	03-78039740 / 03-78827511	noorhaya@hasil.org.my	03-78039767
29	Temerloh	Cik Norshidah bt Mustafa	09-2961052 / 09-2962000 ext 100	norshidah@hasil.org.my	09-2965766
30	Kota Kinabalu	Puan Jessemine bt Jaafar	088-235732 / 088-328400/600 ext 8000	-	088-236254
31	Sandakan	Encik Ahmad Shahran bin Shafiae	089-674712 / 089-674711	ahmadshahran@hasil.org.my	089-669616
32	Tawau	Encik Sambang Gambang	089-777024 / 089-777177 ext 2009	sambang@hasil.org.my	089-776390
33	Keningau	Encik Johnny Anjemeh	087-330641 / 087-339441 ext 32	johnny.anjemeh@hasil.org.my	087-339451
34	Kuching	Puan Ann Sating	082-236670 / 082-243211 ext.1114	-	082-244475
35	Sibu	Encik Nicholas Francis Util	084-332292 ext 122	nicholasfu@hasil.org.my	084-320894
36	Miri	Encik Mohd Sukeri bin Zakaria	085-434000 ext 200	mohd.sukeri@hasil.org.my	085-413824
37	Bintulu	Encik Amilin bin Mahir	086-337975 / 086-316601ext 113	amilin@hasil.org.my	086-316608
38	Labuan	Cik Mazlina bt Baharum	087-408486 / 087-415331 ext 486	mazlinabaharum@hasil.org.my	087-415385
39	Pusat Khidmat Pelanggan	Puan Masuri bt Musa	03-42893000 ext 12018/14010	masuri.musa@hasil.org.my	03-42893759

B Dialogue with the Inland Revenue Board on Tax Audits and Tax Investigations

1.0 A dialogue between the Inland Revenue Board (IRB) and representatives of MIA, MIT, MICPA, MAICSA and MATA was held on December 14, 2006.

2.0 Approach to tax audits

2.1 Conduct of tax audits

The Institutes have been informed that there is a lack of transparency and consistency in the IRB's approach to tax audits. There are cases where different treatments were adopted on the same subject matter which is handled by different officers. The professional bodies have also been informed that the IRB officers have been known to have reversed their past confirmations and verbal promises made during the course of tax audits.

Members of the Institutes have reported that some of the tax audit officers are not conducting the tax audit in a professional manner. Most of them have a preconceived mindset that the taxpayers are already guilty and their visit is more to confirm the "offence". In such cases, the officers will not conclude the audit until and unless they make an adjustment although this may be based on dubious grounds.

The Institutes would like to request that tax audits be conducted in a consistent and professional manner. The Institutes hope that a friendlier and professional atmosphere is established and maintained during tax audits. The IRB officers should not be hostile and the Institutes believe that taxpayers will assist the IRB officers willingly in carrying out the tax audits if they are treated professionally and respectfully.

Jawapan:

LHDNM ***memaklumkan bahawa objektif audit adalah untuk menggalakkan pematuhan cukai secara sukarela, iaitu memastikan pembayar cukai melaporkan pendapatan yang betul mengikut Akta Cukai Pendapatan dan Peraturan LHDNM dan memberi pendidikan kepada pembayar cukai. Oleh itu semua kerja-kerja pengauditan dikehendaki dijalankan mengikut prosedur dan garis panduan yang ditetapkan. Penemuan audit yang dibuat perlulah mempunyai asas dan akan dimaklumkan kepada pembayar cukai***

melalui surat. Sekiranya pembayar cukai tidak bersetuju dengan penemuan audit, pembayar cukai boleh membuat bantahan ke atas penemuan itu dalam tempoh masa yang dibenarkan mengikut undang-undang. Pembayar cukai juga diminta melaporkan secara telus kepada* LHDNM *jika terdapat salahlaku di kalangan pegawai audit ketika menjalankan kerja pengauditan.

2.2 Accounting Knowledge

Members of the Institutes have also reported that in some audit cases, the IRB officers are not familiar and knowledgeable in bookkeeping transactions and accounting principles. This has created a lot of difficulties to our members as they need to spend unnecessary time in explaining the bookkeeping transactions to the IRB officers. There are also instances were some of the IRB officers tend to treat different companies in the same manner notwithstanding the different nature of the business/industry/ commercial environment in which the taxpayers are involved in. Some of the IRB officers are unwilling to accept commercial justification even though detailed explanations with supporting documents were provided. A few examples of the above scenarios are enclosed in Appendix 1.

In this regard, the Institutes would be grateful if the IRB tax audit officers could be adequately trained and equipped with bookkeeping and accounting knowledge before they are assigned to conduct any tax audit. The professional bodies hope that the IRB officers would appreciate the way the businesses are carried out, be mindful of business operations and the rationale for carrying out such transactions so that they can make fair and reasonable conclusions.

Jawapan:

LHDNM ***mengambil maklum balas atas komen yang diberikan dan memaklumkan bahawa usaha yang berterusan telah dan sedang dilakukan bagi memastikan supaya pegawai audit dilengkapkan dengan pengetahuan dan kemahiran teknikal termasuk dari aspek perakaunan. Mesyuarat juga dimaklumkan bahawa semua pegawai audit terdiri daripada pegawai-pegawai yang berkelayakan dari segi akademik, berpengalaman serta telah dilatih bagi menjalankan kerja-kerja pengauditan. Kerjaya pegawai di* LHDNM *bermula dengan proses pengambilan pegawai yang mempunyai kelayakan akademik yang berkaitan seperti perakaunan dan diwajibkan menghadiri latihan asas dan lanjutan berkaitan dengan undang-undang percukaian dan juga perakaunan yang dikendalikan di Akademi Percukaian Malaysia.***

Bagi memantapkan kemahiran dan pengetahuan pegawai yang diserap sebagai pegawai audit, pihak pengurusan* LHDNM *juga telah mengambil langkah menubuhkan* Pusat Latihan Audit (PULADIT) *yang memfokuskan kepada aspek latihan audit secara praktikal dan amali.* Pendekatan *ini adalah merupakan usaha berterusan pihak* LHDNM *dalam memastikan tahap pengetahuan dan kemahiran pegawai sentiasa dipertingkatkan dari masa ke semasa.* Pada *masa yang sama juga, semua kes audit adalah tertakluk kepada penyeliaan ketua kumpulan dan pengurus audit masing-masing.* Pelarasan *cukai adalah berdasarkan kepada peruntukan undang-undang dan tidak semestinya mengikut amalan sesuatu perniagaan.* Lazimnya *amalan komersial sentiasa diambilkira dalam membuat sesuatu keputusan.

2.3 Rationale for tax audit adjustments

The IRB informed in the previous dialogue held on 10 May 2005 that all the tax adjustments are made based on valid reasons and the rationale will be explained to taxpayers via letters and during the discussion with the taxpayers. Nevertheless, the Institutes have been informed that some of the IRB officers are still making tax adjustments without explaining the rationale for making such adjustments and the adjustments made are based on findings by the IRB officers which are backed by valid evidence.

In this regard, the professional bodies would strongly urge that the IRB officers explain to taxpayers in writing the reason/ rationale for each tax adjustment which must be supported by the law so as to be fair to taxpayers.

***Jawapan*:**

LHDNM ***bersetuju dan sememangnya telah menjadi arahan bahawa semua penemuan audit mestilah dimaklumkan secara rasmi kepada pembayar cukai.* Perkara *tersebut adalah terkandung di dalam arahan dan garis panduan yang dikeluarkan kepada pegawai audit.* Disamping *itu pembayar cukai juga diberi peluang untuk memberi maklumbalas sebelum pelarasan mengenainya dilakukan.* Jika *masih terdapat kes seperti yang dinyatakan, pihak pembayar cukai /* Ejen Cukai *dinasihatkan supaya membuat pengaduan kepada pihak* LHDNM *untuk tindakan lanjut.***

2.4 Involvement of tax agent

With the reference to page 5 of the minutes of the previous dialogue with the Compliance Division held on 10 May 2005, it was stated that the IRB always welcomes the attendance of tax agents together with the taxpayers during the discussion.

Nevertheless, members of the Institutes have reported that there are cases where the tax audit officers advised the taxpayers not to ask their tax agents to be present during the tax audit. Some of the tax agents are even told by the IRB officers that their firms would be blacklisted and all their clients would be in trouble. On the other hand, we have also been informed that in certain instances, the audit officers have proposed to taxpayers the names of particular tax agents to represent them.

The Institutes would like to reiterate that the success of the self assessment system depends on the collaboration among taxpayers, tax agents and the IRB. As the tax agents have been appointed to take care of the tax related matters of their clients, it is imperative the tax agents should be informed and invited to attend the discussion / meeting during the course of tax audits.

Jawapan:

LHDNM ***berpendapat bahawa perkara tersebut tidak sepatutnya berlaku. Pembayar cukai adalah bebas malah digalakkan untuk membawa bersama ejen cukai yang dilantik ketika perbincangan berkenaan penemuan audit dijalankan. Jika terdapat kes seperti yang dinyatakan di atas,*** **LHDNM** ***berharap supaya pihak ejen cukai dapat memaklumkan kepada*** **Pengarah Cawangan** ***yang berkenaan untuk tindakan lanjut.***

In view of the above, the Institutes would like to reiterate that the primary objectives of tax audits are to educate taxpayers and to assist taxpayers in complying with the tax legislation to arrive at the right amount of tax payable. Hence, the professional bodies urge the IRB to look into the approach to tax audits seriously and the IRB officers should give the taxpayers the benefit or doubt in genuine cases instead of having the pre-conceived mindset that taxpayers are under-declaring their tax liability. It is hoped that every taxpayer will receive fair, courteous and professional treatment from the IRB officers, who in turn should be technically sound in accounting principles and appreciative of business operations and commercial practices.

Jawapan:

LHDNM ***sekali lagi menegaskan bahawa objektif utama audit cukai ialah untuk menggalakkan pematuhan secara sukarela terhadap undang-undang dan peraturan percukaian dan mempastikan bahawa pendapatan yang betul telah dilaporkan dan cukai telah dibayar mengikut undang-undang dan peraturan percukaian. Sehubungan dengan itu*** **LHDNM** ***berharap agar pandangan serta persepsi negatif masyarakat terhadap aktiviti audit cukai***

yang dijalankan oleh* LHDNM *akan berubah. Perkara ini juga akan ditekankan didalam* Rangka Kerja Audit Cukai *yang akan dikeluarkan.

3.0 Time frame and scope of a tax audit

3.1 During the dialogue with the Compliance Division of the IRB held on 10 May 2005, the IRB stated that tax audit cases should be finalized within 3 months from the date of commencement of the audit. However, members of the Institutes have reported that some IRB officers have delayed the finalization of some tax audit cases and taken more than a year to finalize them. There are instances whereby additional assessments were raised after long period of time even though the IRB's field audit officers had completed the field audit and issues raised were agreed by both parties much earlier. There are also instances where the IRB disagrees with the explanation given by the taxpayers and disapproves the appeal after 5 months has lapsed form the provision of the explanation / appeal. Some IRB officers also ask for additional documents after the field audits have been concluded and refuse to close cases although no findings have been made on any specific issues.

The Institutes hope that the IRB would look into this matter seriously and improve its efficiently in order to finalize tax audit cases by issuing letters on a timely basis, so that the outcome of the tax audits can be made known to taxpayers.

***Jawapan*:**

***Berdasarkan kepada keadaan biasa, kes audit hendaklah diselesaikan dalam tempoh 3 bulan. Walau bagaimanapun terdapat kes-kes audit yang memerlukan masa yang lebih untuk diselesaikan kerana beberapa sebab seperti saiz perniagaan pembayar cukai yang besar, tiada kerjasama dari pembayar cukai, pembayar cukai tidak menyimpan rekod dengan lengkap dan isu audit yang rumit. Sekiranya terdapat kes yang melebihi 3 bulan untuk diselesaikan, pembayar cukai mempunyai hak untuk mendapatkan penjelasan dari* LHDNM.**

LHDNM *tidak nampak sebarang justifikasi bagi seseorang pegawai audit sengaja melambat-lambatkan penyelesaian kes kerana ianya akan menjejaskan prestasi pegawai audit tersebut. Sebarang persetujuan dicapai akan disahkan secara bertulis. Surat cadangan pelarasan cukai dengan penjelasan terperinci akan dikeluarkan terlebih dahulu sebelum notis taksiran tambahan dikeluarkan. Pembayar cukai mempunyai hak untuk membuat bantahan dalam tempoh masa yang dibenarkan.*

LHDNM *juga berpendapat bahawa pembayar cukai juga perlu memberikan kerjasama untuk menyegerakan penyelesaian satu-satu kes dengan memberikan maklumbalas terhadap semua pertanyaan dan juga dokumen yang diperlukan oleh pegawai audit.*

3.2 On the other hand, when the 3 months period is drawing to a close members have reported that on-going cases a hurriedly "closed" through the issuance of the notice of additional assessment. The taxpayers are then required to file a Form Q as an avenue of appeal.

The Institutes would like to highlight the following: -

- The requirement for audit cases to be settled within a fixed time frame has resulted in cases being hurriedly closed with no proper justification for certain adjustments. Taxpayers have no other avenue but to file a Form Q. Audit cases should be settled within a reasonable time frame with the proper procedures being followed and lot merely finalized due to time constraints.
- If there are no findings by the IRB, the case should be closed and not left unresolved.

***Jawapan*:**

***Seperti penjelasan di para* 3.1.**

3.3 The Institutes have been informed by members that, as part of the process of finalizing an audit, they / their clients are required to sign a letter of agreement / declaration stating that have under-declared a specific amount of income.

The Institutes are of the view that such a declaration is not necessary. A tax audit is not a tax investigation which requires an agreement before a composite assessment is issued. One of the purposes of a tax audit is to educate taxpayers and such a declaration does not support that purpose.

***Jawapan*:**

LHDNM *menegaskan bahawa penemuan audit tidak memerlukan persetujuan pembayar cukai. Sehubungan dengan itu jika sebarang pertimbangan atau bayaran ansuran telah dibenarkan atas permintaan pembayar cukai, maka adalah wajar pembayar cukai diminta memberi persetujuan terhadap pelarasan cukai secara bertulis.*

3.4 Members of the Institutes have reported that some IRB officers have raised some issues and asked for documents to "time barred" years.

The Institutes are of the view that no issues should be raised beyond the period of 6 years as taxpayers are only required to keep their records for 7 years under the legislation. Hence, taxpayers are unable to respond effectively when the relevant supporting documents requested by the IRB goes beyond the time-barred years.

***Jawapan*:**

Pada kebiasaannya isu-isu yang dibangkitkan dalam kes-kes audit hanya meliputi tempoh 1 hingga 3 tahun sahaja. Sebarang permintaan dari pegawai audit terhadap dokumen-dokumen bagi tahun-tahun sebelumnya adalah bertujuan membantu memahami isu berkenaan secara menyeluruh. Seperti contoh, kes pemaju dan kontraktor, adalah mustahil mengaudit kes pemaju jika tidak dilihat dari permulaan sesuatu projek itu. Walaupun begitu, isu dan dokumen yang telah melebihi tempoh masa tidak akan dibangkitkan.

4.0 Imposition of penalties

4.1 In the previous dialogue, the IRB informed that the penalty imposed on tax investigations are higher than tax audit. However, a lower penalty may be imposed in certain cases which involve substantial amount of tax. On the other hand for tax audits which involve only one or two year of assessment and which are carries out on a basis which is not as detailed as compared to tax investigations, the penalties are fixed at a minimum of 60%.

The professional bodies are of the view that the IRB justification for a lower penalty in investigation cases as explained above is unreasonable as it would mean that the higher the amount of tax a taxpayer had evaded and the more years that are involved, the taxpayer will be rewarded with a lower penalty whereas in a case of tax audits, more tax would be recovered by way of a higher penalty merely because of a small amount of understatement of tax for 1 or 2 years. In this regard, the professional bodies are of the opinion that tax investigation cases which would involve tax evasion and considered to be a more serious offence are certainly different from tax audits which generally involve technical adjustments and/or other compliance issues. Hence, the Institutes would be grateful if the IRB could review and revise the penalty structure for tax audits. In the case of a technical adjustment, there should not be any penalty (also see Paragraph 4.3 below).

Jawapan:

Pada keseluruhannya penalti yang dikenakan bagi kes-kes penyiasatan adalah lebih tinggi dari penalti kes-kes audit. Penalti bagi kes audit sebanyak 60% adalah lebih rendah berbanding penalti kes penyiasatan yang boleh mencapai kadar 100%. Walaupun terdapat penalti kes penyiasatan yang kurang dari 60%, ianya adalah kes terpencil.

4.2 The professional bodies have been informed that the IRB issues letters to taxpayers to inform them that if the audit adjustments are accepted, the penalty imposed would be 60% (for the first offence as per IRB guidelines). If the adjustments were not accepted, the IRB would issue an additional assessment together with a penalty of 80%. The usual reply given by the IRB for the higher penalty is that the taxpayer has not been co-operative. In certain instances, the additional assessment is raised with a 60% penalty without allowing the taxpayer to appeal against the audit findings. In addition, members have also encountered situations where installment payments are allowed after an imposition of penalties of 10% and 5% is incorporated.

The Institutes would like to seek clarification on the basis of imposition of penalties. The Institutes are of the opinion that disagreements over the audit adjustments should not be viewed as a sign of non-cooperation of the part of the taxpayers and hence the penalty rate of 80% should not be imposed on such a basis.

Jawapan:

Kadar penalti 80% tidak wujud lagi. Pembayar cukai mempunyai hak untuk membuat bantahan terhadap sesuatu taksiran dengan mengemukakan Borang Q. Penalti sebanyak 10% dan 5% hanya akan dikenakan jika berlakunya kegagalan di pihak pembayar cukai mengikuti bayaran ansurannya. Kadar penalti ini tidak diambilkira dalam taksiran sebagai asas penyelesaian kes audit.

4.3 In addition, members of the Institutes have also informed that there are cases where the audit findings are clearly technical adjustments and penalties continue to be imposed. There are cases where the taxpayers had made a voluntary disclosure regarding mistakes or omissions made in prior years and submitted the revised tax computations to the IRB but the maximum penalty is still imposed. There are also instances where the Notices of Assessments are raised by the IRB even in the midst of negotiations and discussions and while the relevant information is still pending.

The rationale for a tax audit is to gauge the degree of compliance under self assessment, to ensure compliance and also in the process to educate taxpayers on compliance. Whilst the Institutes can understand that the rationale for imposing a penalty is to discourage cases on non-compliance, the Institutes are of the view that the authorities should be flexible when imposing penalties. Penalties should not be imposed were genuine mistakes are made and the taxpayer voluntary submits revised tax computations or where it involves contentious issues of which adequate disclosure has been made by the taxpayers. As agreed by the IRB and stated on Page 27 of the minutes of the dialogue with the Revenue Management Department of the IRB held on 16 February 2005, no penalty should be imposed if a taxpayer adopts a differing position from that taken by the IRB if this is disclosed by the taxpayer when submitting his tax return.

***Jawapan*:**

Perkataan teknikal selalunya disalah ertikan. Jika undang-undang adalah jelas dan pembayar cukai tidak membuat pelarasan yang sewajarnya atau menyembunyikan tuntutan, ia adalah satu kesalahan dan wajar dikenakan penalti. Dalam hal ini LHDNM juga setuju bahawa penalti tidak patut dikenakan ke atas kes-kes yang melibatkan interpretasi perundangan percukaian yang tidak jelas. Tindakan yang sama harus juga diambil bagi kes dimana pembayar cukai telah tidak menyembunyikan apa-apa perkara atau telah melaporkan secara keseluruhan perkara-perkara yang menyebabkan kedudukan perbezaan sesuatu pendapatan semasa pengemukaan Borang Nyata. Di mana pembayar cukai membuat pengakuan secara sukarela, maka kadar penalti akan dikenakan mengikut jadual sedia ada. Mengenai kes taksiran dikeluarkan semasa rundingan masih berjalan, pihak ejen cukai perlu rujuk kes tersebut kepada Pengarah Cawangan berkenaan untuk membuat bantahan.

4.4 Based on the previous minutes, the penalty structure as stated in the IRB's Guide on Tax Audits is applied in situations where the taxpayer co-operates with the IRB will make the relevant changes in the Guidebook to avoid misunderstanding by the taxpayers. Currently, paragraph 5 of the Guidebook states, "The penalty rates are dependent on the time that has lapsed between omission and voluntary disclosure". Any changes in the position on the IRB should be first publicly disclosed or disseminated and only then, should it take effect.

The Institutes are of the view that penalties should be structured based on culpability. The IRB should be transparent in the imposition of penalties. If one discovers his mistake and voluntarily notifies the IRB, a penalty should not be imposed as there is no culpability involved in such a case. They penalty rate should be reviewed so that the rates are imposed based on culpability. The maximum penalty rate 60% should only be imposed when there is a proven intention to understate tax liability or under-declare income i.e. culpability must be proved.

***Jawapan*:**

Kadar penalti bagi kes-kes audit termasuk kes pengakuan secara sukarela akan dimasukkan dalam* Rangka Kerja Audit Cukai *yang baru.

4.5 In addition, the Institutes would like to suggest that special powers be allowed for the Pengarah Cawangan / Pengarah Negeri to be able to reduce the amount of penalty imposed. An independent panel made up of 2 or 3 members (not involved in the tax audit) should be established to allow taxpayers to present their case in instance where the penalty is felt to be unjustly imposed.

***Jawapan*:**

Pihak Pengarah Cawangan boleh mencadangkan agar tiada penalti dikenakan bagi sesuatu isu audit berdasarkan kepada bukti-bukti audit yang ditemui.

5.0 Document / records taken in a tax audit

It is reported by some members that documents and files have been requested verbally or through a phone call after the field audit at a taxpayer's premises. These were not returned pending finalization even after one year. In some instances, the IRB officers have insisted on taking copies of everything instead of reviewing the source documents at the business premises and some of the IRB officers did not even look at the source documents provided but just selected journal entries based on the general ledger listing and requested the taxpayer / tax consultant to make copies of the journal entry and source document. There are also cases where the IRB officer failed to make copies of the documents but took possession of the original documents and retained them for a long period before returning those documents to the taxpayer. On the other hand, there are some IRB officers who refuse to look at the source documents (for example the sales invoices) but instead focused on the bank statements in determining the

turnover of a company. This is inconsistent with what was stated in the minutes of the last dialogue that records are only to be taken where it is absolutely necessary and that these should be returned to the taxpayers as soon as possible.

The Institutes hope that the IRB could return the record s taken within a stipulated time frame say three months or immediately after the tax audit cases are finalized, whichever is earlier. It is also hope that the IRB is more flexible in carrying out tax audits for genuine cases where the supporting document were incomplete but there are sufficient grounds to make reasonable judgements on the issue and the IRB officers should accept reasonable explanations from taxpayers.

***Jawapan*:**

Pegawai audit tidak dibenarkan mengeledah dan merampas rekod-rekod pembayar cukai. Semakan rekod hanya akan dilakukan di premis pembayar cukai. Sekiranya perlu pegawai audit hendaklah dibenarkan membuat salinan rekod dan dokumen yang berkaitan.

Walau bagaimanapun, dalam keadaan di mana suasana dan tempat yang disediakan oleh pembayar cukai untuk menjalankan kerja-kerja audit tidak sesuai serta tiada kemudahan mesin penyalin, pegawai audit boleh meminta kebenaran untuk meminjam dokumen dan rekod pembayar cukai untuk dibawa balik dan disemak di pejabat. Setelah selesai disemak, rekod dan dokumen tersebut akan dikembalikan kepada pembayar cukai dengan secepat mungkin.

6.0 Request for audit working papers or other confidential information

The IRB has stated in the previous dialogue held on 10 May 2005 that the audit working papers are required to assist the field audit officers to expedite the finalization of the tax audit cases as most of the explanations are available in the audit working papers. However, the IRB is unable to understand why such a long period is required for the following of the audit working papers if only or two cases are requested.

The professional bodies would like to emphasize that a longer time frame should be given to auditors to retrieve the audit working papers as the files which are related to prior years could be store in an offisite storage location and the auditor would need more time to make arrangements to retrieve the said information.

Jawapan:

Kertas kerja audit biasanya diminta jika keadaan memerlukan. Ianya diperlukan bagi membantu pegawai audit menyemak dan menentukan jumlah perbelanjaan atau perolehan yang diselaraskan oleh juruaudit kewangan pembayar cukai terutama bagi kes-kes dimana pembayar cukai tidak menyimpan rekod dengan lengkap dan pembayar cukai sendiri tidak dapat memberikan penjelasan berkenaan pelarasan yang dilakukan.

The Institutes have been informed that in certain cases, audit working papers continue to be requested by the audit officers at the initial stage.

The Institutes would like to highlight that one of the objectives of a tax audit is to verify the information that the taxpayer has submitted in their annual tax returns. Hence, the audit working papers should not be requested as the first source of documents even before the commencement of any tax audit by the IRB officers.

In this regard, the Institutes are of the view that audit working papers should not form the starting point for an audit as the format of audit working papers are not consistent and would differ between auditors. The reliance on audit working papers (which are not comprehensive in terms of coverage of all aspects) may result in a biased interpretation against the taxpayers. Therefore, access to working papers should only be relied upon if it is absolutely necessary, after going through the record available from the taxpayer. The Institutes also hope that the IRB could set a reasonable time frame for returning the audit working papers to the auditors as audit working papers are crucial in carrying out the current year annual statutory audit. We would recommend a time frame of three (3) months.

The Institutes also wish to highlight that the volume of documentation requested by the audit officers has increased. This has resulted in taxpayers incurring higher costs in complying with the officers request to produce this documentation. We wish to request that the IRB abide by the original intention of an audit i.e. the verification of the tax return documents rather than seeking to find fault and pursuing a revenue target.

Jawapan:

Adakalanya sebelum pengauditan dijalankan, pihak* LHDNM *telah dimaklumkan oleh pembayar cukai mengenai pelarasan yang dilakukan pada akaun asal. Sehubungan dengan itu, untuk

mengurangkan banyak persoalan dan pertanyaan dibangkitkan ketika sesi temuduga dan pengauditan, maka kertas kerja audit diperlukan untuk persediaan awal kerja-kerja pengauditan.

LHDNM ***bersetuju bahawa pengauditan tidak hanya berasaskan kepada kertas kerja audit semata-mata. Pembayar cukai boleh membuat bantahan sekiranya penemuan dan juga penyelesaian kes yang dibuat oleh pegawai audit adalah semata-mata berasaskan kepada kertas kerja audit sahaja.***

7.0 Timing of audits

The Institutes have been informed that there are cases where taxpayers receive the field audit notification letter less than 14 days. There are some cases whereby only 2 or 3 working days notice is given before the actual visit. The taxpayers face difficulties in preparing the documents required prior to the commencement of the tax audit due to the short notice given. Most taxpayers are only give 14 days from the date of the IRB's letter to make available all documents requested (in actual fact it is not exactly 14 days as by the time the taxpayer receives the letter, 1 week would have passed). Member have also informed that taxpayers were often given unreasonable deadlines when the IRB requests document in relation to the prior years records. Taxpayers may need to locate documents from the stores or even from the head office. The IRB officers sometimes get very upset when information is not provided immediately and presume that the taxpayers have something to hide.

The Institutes have also been informed that there is a lack of appreciation of the fact that taxpayers may have their own reporting deadlines and other business objectives to attend to. Sometimes, it may be not be practical to immediately comply with the IRB request as taxpayers could be in the midst of an annual internal / external / business audit, or attending to the Custom's audit or group internal reporting, etc. Hence, the finance personnel may not be available to attend to the IRB officers. As the IRB audit is not the only audit the taxpayer has to attend to any request for an extension of time due to the above situation should be viewed favorably by the IRB to accommodate the taxpayer's time constraints.

In view of the above, the professional bodies would like to request that the notification of tax audit visits be sent out much earlier so that these are received by taxpayers at least 14 days prior to the commencement of the tax audits. More time should be given to the taxpayers to locate the relevant documents if

more documents especially prior years record are required. This will assist the IRB officers in conducting the tax audit in a mo9re efficient manner as all the documents would be ready for audit purposes and the IRB officers do not need to spend more time at the taxpayer's business premises to extract the documents. In addition, the Institutes also urge the IRB consider the taxpayer's request for a reasonable extension of time and not merely stick to a pre-fixed timetable.

Jawapan:

Dalam kebanyakan kes,* LHDNM *sentiasa memberi perhatian terhadap permintaan pembayar cukai untuk menangguhkan kerja-kerja pengauditan jika terdapat alasan yang manasabah.

8.0 Presence of senior IRB officer

The Institutes have been informed that some senior IRB officer are reluctant to meet with taxpayer / tax agents in resolving the disputes arising from tax audits. Some taxpayers are facing difficulty in arranging for discussions with the senior IRB officers to discuss issues raised during the tax audits. There where a few occasions where the pre-arranged meetings with the senior IRB's officer were cancelled at the very last minute even though they had confirmed their attendance for the meetings. This has upset the taxpayers, especially the outstation / overseas taxpayers, as they have made the necessary arrangements and incurred substantial time and costs to travel for the said meeting with the senior IRB officers in order to settle the case.

The Institutes would like to request that the senior IRB officers be more approachable and in the event that if there is any particular senior officer who cannot attend the pre-arranged meeting, a substitute for the IRB officer with the same level of authority (and whose decisions are equally binding) be made so that the particular case can proceed and be concluded without any further delay.

Jawapan:

Pegawai kanan* LHDNM *di cawangan sentiasa mengalu-alukan kehadiran pembayar cukai bagi mempercepatkan proses penyelesaian satu-satu kes. Pembayar cukai boleh hadir ke pejabat* LHDNM *tanpa diminta untuk berbuat demikian bagi mendapatkan penjelasan berkenaan perkembangan proses audit atau memberikan maklumat lanjut bagi mempercepatkan penyelesaian audit. Jika keadaan memerlukan, pembayar cukai boleh berhubung dengan pengurus audit untuk membincangkan

isu audit yang dibangkitkan. Pegawai audit akan disertai oleh sekurang-kurangnya seorang pegawai kanan di dalam setiap sesi perbincangan dengan pembayar cukai.

9.0 Settlement and appeal

As provided under paragraph 3.5 of the "IRB Guide on Tax Audit", it is stated that if there are no adjustments, a letter will be issued to inform that the audit has been finalized without any adjustments.

The Institutes have been informed that some IRB officers are very reluctant to issues such a letter in practice. There is undue delay in issuing such a letter after completion of the tax field audit as a result of the frequent changes in the IRB officers in charge of the tax audits. In some cases, there was no feedback from the IRB for 6 to 8 months. On completion of an audit, there is sometimes no response from the IRB but instead the taxpayer is expected to make an offer to settle the case. There is no instance whereby three companies within thee same group were being audited and for two of the companies, there were no tax adjustments made to the assessments. However, the IRB refused to issue the "Letter of Clearance" to them because the third company had filed a Form Q on the adjustments made to its tax computation.

IRB officers should also adopt a positive attitude-that if no adjustments are required to a tax return submitted by the taxpayer, it is a good sign that the taxpayer had complied fully with tax laws, rules and regulations and the taxpayer should be congratulated. IRB officers should be made to understand that it is NOT an offence to comply fully with the tax law.

The Institutes have also been informed that the IRB officers revisit other issues and request for additional documents after the field audit is completed. This has created an unnecessary burden and disruption to the taxpayer's business s most of the files may have been returned to the store and the taxpayer has to incur additional time and cost to retrieve these files.

In this regard, the Institutes strongly urge that the benefit of doubt should be given to taxpayers in genuine cases and the clearance letter be issued immediately once the tax audit is finalized even without any tax adjustments. Response from the IRB should be expedited once the information requested is provided to the IRB officers. The IRB officers should not refer to prior notice years records and keep on checking if they are unable to find any tax adjustments for the years of assessment which are subject to tax audit.

Jawapan:

Setiap kes audit yang telah selesai akan dimaklumkan kepada pembayar cukai samada terdapat pelarasan atau sebaliknya.

10.0 Proposed Framework for tax audits

With reference to page 10 of the minutes of the previous dialogue held on 10 May 2005, the IRB stated that the framework is found in the booklet "IRB Guide on Tax Audit" dated November 2000 and requested the professional bodies to refer to that booklet and give their comments on areas which are considered to be incomplete or need improvement.

In this regard, the Institutes would like to forward our comments as follows:-

	Paragraphs (Para)	**Comments/Suggestions**
1	Para 1 Field Audit	• The checking of taxpayer's records should be restricted to business records only unless the IRB has grounds to ask for non-business records. The IRB should be able to clarify why non-business records are required for the purposes of the field audit. • The sentence "Normally, a taxpayer will be given prior notice of a field audit" should be reworded so that it is mandatory for the IRB to notify taxpayers in writing 14 days prior to the commencement of the tax audits.
2	Para 3.2 Preliminaries	• Sufficient time, at least 14 days from the date of receipt of the mail (depending on the size of the taxpayers) should be given to taxpayers to retrieve records for examinations. • The date of the IRB's letter should take into account of postal delays. • The letter should also include the scope and duration of the field audit as well as the years of assessment under review. • Besides taxpayers, the tax agent of the taxpayer should also be notified of the audit.

	Paragraphs (Para)	**Comments/Suggestions**
3	Para 3.3 The Visit	• The taxpayer is allowed to ask for a change in the timing of the visit in the event that the taxpayers need time to retrieve records or the taxpayer could be closing its accounts or conducting a physical stock take or have a busy operation schedule that cannot be postponed etc • The brief interview should be conducted with the appropriate/ relevant personnel as appointed by the taxpayer • During the course of the audit, taxpayers should be informed of the progress of the audit.
4	Para 3.4 Examination of Records	• For a field audit case, the IRB officer should be allowed to take a photocopy of relevant documents but should not remove original documents from the taxpayers' premise. Therefore the sentence "Under such circumstances, the officer will request for the taxpayer's permission and provide him a list of records taken. The taxpayer will be allowed to check and make copies of such records" should not apply in field audit cases (this should only be relevant for investigation cases).
5	Para 3.5 Settlement and Appeal	• Technical issues arising from the tax audits could be referred to a Technical Unit set up for resolving issues related to different interpretation of the law. • The IRB officer should also explain clearly the basis of any adjustments made as a result of the audit. • The taxpayer should be informed of his/her rights to a review and the remedies available. • For the purpose of educating taxpayers, the IRB officer should also bring to their attention any matters that will help them understand and meet their taxation obligations in the future.

	Paragraphs (Para)	Comments/Suggestions
6	Para 4.3 Responsibilities of Taxpayer	• The taxpayer should not be queried on personal matters such as bank accounts, savings, assets, etc unless there is a sound basis/reason provided by the IRB.
7	Para 4.5 Problem Settlement	• If the settlement could not be reached with the senior officer at the relevant IRB Branch, the case should be referred to the IRB Headquarters.
8	Para 5 Penalty	• The penalty structure should be reviewed and amended so that there are lower penalty rates for tax audits and there should be no penalty imposed under the following situations: ➢ mistake found during a tax audit resulting from arithmetical mistake or mistake in posting of accounting entries or genuine mistakes with regard to tax treatment that have been agreed or not objected to by the IRB during the official assessment system where disclosure has been made in the accounts or tax computations. ➢ Taxpayers have come forward with revised tax computations and have volunteered to pay the additional taxes without waiting for any additional assessment to be raised.

In view of the above, the Institutes would like to highlight the submission of our proposed framework for tax audits in the previous dialogue (see Appendix 2) which outlines the objectives and general principles of tax audits, the rights and obligations for the IRB officers as well as the taxpayers, the procedures involved, penalties and avenues of complaints in the event of a tax audit. In this respect, the Institutes urge the IRB to take up this framework to address the various problems raised above.

In continuing to maintain the standards of its members, the Institutes would suggest that the IRB provides the names of errant tax agents who are members of the Institutes to enable disciplinary action to be taken, where applicable.

***Jawapan*:**

***Rangka Kerja Audit Cukai sedang disediakan dan akan dilancarkan serta berkuatkuasa mulai* 01 *Januari* 2007.**

11.0 Tax Investigations

11.1 Time frame for tax investigation cases

11.1.1 Members of the Institutes have highlighted that some tax investigation cases have been dormant for more than one year without any issues being raised or any meetings being called. In most of the cases, the documents have been taken but no questions have been raised. On enquiry, taxpayers are told that the investigation branch has limited resources and a meeting will be called soon (but no further action occurs thereafter) or the files are still being examined and the taxpayers are asked either to propose a figure for settlement or to "volunteer areas of "wrongdoing". This has caused practical problems to thee taxpayers as it may lengthen thee period of time unnecessarily in which a company is under investigation and as a result the penalty cost (on any additional tax payable) will increase once an investigation case has exceeded a 6 month frame from the date of investigation. In addition, it also causes undue disruption to the company's business operations / activities.

Answer

IRBM informed that firm action has been taken to expedite settlement of long outstanding cases. To that effect the Investigation Department implemented the Civil Investigation Work Procedure Manual in 2005 to standardize and regulate investigation activities of the investigation centers nationwide.

Further, the Investigation Department at Headquarters is continuously monitoring the aging of each investigation case to ensure timely action. Examples cited above are more the exception than the norm now.

In addition, an instruction outlining the procedure pertaining to penalty imposition and installment payments was issued by the IRBM in 2002. The basis for penalty imposition and granting of installments were clearly stated in this internal instruction which has been made public. For example, on the issue of time frame, unforeseen circumstances (e.g. officers attending courses, transferred etc) have been accounted for when considering the time taken to settle an investigation case.

11.1.2 The Institutes have also been informed that there are delays in obtaining the signed Composite Assessment (Agreement Pursuant to Section 96(A)1 or Notice of Assessment from the IRB after the finalization of tax investigation cases. Documents / files / records are still kept at the IRB's premises during such a period of time and it causes practical difficulties for the taxpayers to access their own company's records which are pertinent to their day-to-day business operations.

The Institutes are of the view that thee IRB officers should look into the above matters seriously and take the necessary steps to expedite the investigation processes so that the documents and files could be returned to the taxpayers in due course. The Institutes also wish to highlight that in instances where thee investigation results in no findings, the case should be closed and not left unresolved indefinitely.

Answer

IRBM reiterated the that the Civil Investigation Work Procedure Manual has laid down the time frame for settlement of tax investigation cases, which has to be duly submitted and approved by Headquarters within the stipulated period. The investigation Department at Headquarters closely monitors the cases to ensure timeliness and speedy return of taxpayer's records.

IRBM also will return records not needed or relevant to finalization of the case at the earliest possible instance.

11.2 Approach to tax investigation

The Institutes have received feedback from members that certain officers continue to treat the taxpayers with a biased view that taxpayers are "guilty" pending the finalization of the investigation. Some taxpayers have informed that higher penalties have been imposed where the taxpayers does not agree with the findings of the investigations.

The Institutes wish to highlight that the IRB should be transparent/ open with the information that the IRB has on a particular taxpayer. The taxpayer has the right to know the basis of the investigation rather than be kept in the dark on the investigation. The taxpayer would be able to assist to expedite the finalization of the investigation if he is aware of the issues.

Answer

IRBM informed that all investigation officers must adhere to the standards set out in the Civil Investigation Work Procedure Manual with effect from 2005.

11.3 Seizure of documents

The mannerism of certain IRB officers is unprofessional during an investigation at the time of looking for and seizing documents. In a specific case, the IRB officer turned up for the tax investigation without a warrant. Further, other documents which were not related to the companies under the tax investigation were also screened through by the IRB officers even though they were specifically asked not to do so.

We would strongly suggest that the IRB officers should be more professional in handling cases. It is also hoped that the IRB officers would treat all staff of a company being investigated with due respect. A tax investigation should not be viewed as a criminal case.

Answer

IRBM informed as stipulated in Civil Investigation Wok Procedure Manual, the investigation officer should produce the authority card, introduce him and the team to the taxpayer as well as explain the purpose of the visit. Under section 137 of ITA 1967 taxpayer has the right and can demand the investigation officer to produce the authorization.

As empowered under section 80 ITA 1967, the investigation officer has the right to inspect copy and confiscate all documents in the premises, in the custody of or under the control of the taxpayer.

Currently, all investigation officers have been instructed to seize and confiscate documents and records of taxpayer in a manner stipulated in the Criminal Investigation Procedure regardless of whether the investigation case will be settled through civil or criminal mode of settlement.

11.4 Assignment of new officers

The Institutes have been informed that in certain instances where the investigation officer has been replaced or transferred, the new officer will begin to review the case afresh and stars to raise the same issues all over again.

The Institutes would like to enquire on the procedures involved where investigation officers are assigned to take over existing cases. The fresh review of resolved issues will only cause further delay in the finalization of the case.

Answer

IRBM informed that the new officers assigned to take over existing cases need to review the investigation cases to ensure fairness to Revenue as well as the taxpayer, however care will be taken to minimize further delay and disruption to taxpayer.

11.5 Proposed framework for tax investigations

The Institutes forwarded a proposal framework for tax investigation at the previous dialogue held on 10th May 2005 for the IRB's consideration. The proposed framework outlined the objectives and general principles of tax investigations, the rights and obligations of the IRB officers as well as the taxpayers, the procedures involved penalties and avenues of complaints in the event of tax investigations.

The IRB informed in the previous dialogue held on 10th May 2005 that the IRB is in the midst of drafting a comprehensive frame work for tax investigations which would include rights and obligations of taxpayers, tax agents and the IRB. It was also stated in the minutes of the said dialogue that due consideration will be given to our proposed framework (wherever possible) in drafting the IRB's framework for tax investigations.

The Institutes wish to highlight the importance of having a framework and would like to enquire on the status of the framework from the IRB so that it can be referred to in dealing with the IRB with regard to any tax investigation cases. In this regard, a copy of our proposed framework is attached (see Appendix 3) for easy reference.

Answer

The final draft of the Framework for Tax Investigations will be reviewed by the Tax Review Panel of the Ministry of Finance.

Appendix 1

1. Industrial building allowance

A recent case involves the issue of industrial building and what portion qualifies (or does not qualify) for industrial building allowance.

Facts of the case

The client operates a large-scale repair and maintenance facility for lorries and special purpose vehicles (oil tankers, LPG transporters and express buses). The facility consists of a large covered building (quite similar to an aircraft hangar) in which are located bays to carry out engine repair and overhaul, body repairs and re-construction, and vehicle painting. The facility comes with wide access roads and ample parking space.

A small separate building situated across the parking space from this facility is used for storing common, fast moving and essential spare parts (oil filters, spark plugs, fan belts, etc) for immediate replacement in the course of repairing and servicing the vehicles. Stocking up on these essential spare parts is indispensable because the spare part shops are several miles away from the workshop. Securing a part from these shops would mean additional cost in terms of time and money. The said building also houses a counter through which the spare parts are dispensed, and an administrative office, accommodating about four staff seated behind the counter.

The IRB insists that the space used for storing the spare parts will not qualify for IBA. Alternatively it argues that as the business includes the sales of the spare parts to customers, the whole facility would not qualify for IBA. In their support they cited the provisions contained in Para 64, which, in defining a 'workshop', excludes a workshop in certain cases:

'…other than a workshop used for the repair or servicing of goods if the repair and servicing is carried on in conjunction with or incidentally to the business of selling of those goods'

The business consists mainly of workshop operations that involve the repair and maintenance of heavy motor vehicles – not selling those motor vehicles. The business is also certainly not one of sale of spare parts to customers. Certain common spare parts are merely stocked for facilitating repairs without undue delays. Stocking up on such spare parts does not change the character of the main business of the repairs and maintenance of heavy motor vehicles.

It is our view that the facility qualifies within the meaning of a 'workshop', and therefore qualifies for industrial building allowance.

In our opinion, the matter need not have reached this stage if the officers are more informed of the business environment and flexible in their approach.

2. Contractor accounts

Facts of the case

A contractor engaged in the construction of a 'Dewan Orang Ramai' took two years to complete the said building. The tax agents prepared the tax computation using the 'Percentage of Completion Method' for the first year based on estimated figures. For the second year, upon completion of the project, the computation was prepared using actual figures that then became available.

The IRB audited the taxpayer and used the actual figures that were available in the second year to revise the first year's chargeable income.

As a result, the tax for the first year as computed by the IRB was lower than the one prepared by the taxpayer. However, for the second year the IRB's computation of the chargeable income was higher than what had been computed earlier.

The IRB then issued a notice of additional assessment for the second year with a 60% penalty on the additional tax raised.

When the matter was raised with the officers responsible for the audit, they were adamant in their view that there was an under-declaration of income and that the penalty was correctly imposed.

In our view, this is a simple clear-cut case that does not warrant a re-computation. The additional tax should not arise in the first place since the computation is in line with the basis of recognition of taxable income of housing developers agreed during the dialogue between the professional bodies with IRB (see Technical Dialogue on 16 Feb 1994 Para 12).

Even if the IRB insists on the re-computation of the tax liability, certainly it should not attract any penalty, as there was no proven culpability.

3. Seminar fees

Subsequent to the field audit, the taxpayer had forwarded its justification of the expenses incurred, for example on agency training which is very much industry practice and purely for business purposes but the IRB officers dismissed the points put forward on the basis that the expenses are not wholly and exclusively incurred and that they are guided by their internal guidelines in terms of what can be taken as a deduction. When the taxpayer asked for some guidance on what the internal guidelines are so that they can follow these in future to ensure that they comply with all IRB's requirements and are not penalised, the IRB officers were unable to reveal it which is rather unfair. A taxpayer wants to be compliant with all the rules and guidelines of IRB even though that would mean paying more tax as long as they avoid any penalties, but they are unable to unless IRB make known what these internal guidelines are.

There are several cases of taxpayers who had incurred expenditure on seminars, workshops and training courses attended by the staff, and sometimes the director himself.

These expenditures, ranging from RM200 to RM2,000 each, were disallowed and the only reason/s given was that:

- It was 'not necessary to attend such seminars';
- 'It was not incurred wholly and exclusively in the production of gross income'; or
- 'The business could still be conducted without attending the seminar'.

Some examples are given below:

i. A restaurateur attending a sea food seminar

In one case, a taxpayer in Kota Bharu who runs a seafood restaurant attended a seminar on seafood organized by the Chinese Chamber of Commerce in Kuala Lumpur. The seminar covered various aspects of fresh sea food acquisition, proper methods of storing sea food and an assortment of popular and exotic culinary preparations.

The Inland Revenue Board disallowed the amount incurred.

ii. Housing developer attending a fire safety seminar

In this instance, a taxpayer who is a housing developer was 'invited' by the local Fire and Rescue Department to attend a regional seminar on fire safety that focused on the current fire safety standards, the infrastructure requirements for fire safety, and implementation of the latest safety standards in housing and commercial construction and development. The general manager of the housing development company attended the seminar.

The entire cost (i.e. the seminar cost, travelling and accommodation etc) was disallowed.

iii. Restaurant manager attending an English course

In another instance, a popular restaurant frequented by foreign tourists found it necessary to have the food and beverage manager speaking good English. The manager attended a refresher course in 'Communication English' designed for restaurant personnel. The company paid for the cost.

But the cost was disallowed as 'not incurred in the production of gross income'.

iv. Credit Guarantee Corporation (CGC) Annual Guarantee Fees

Clients who have obtained bank loans and bank overdraft facilities guaranteed by CGC are required to pay an annual guarantee fee to CGC.

The local IRB office refused to give a deduction for such annual guarantee fee expenditure incurred.

We are of the view that the annual guarantee fees should be deductible – the reasons being the renewal does not bring into existence any new asset or capital advantage.

4. Stock written off

The company is involved in trading of medical products. The company will write off and discard stocks which are already non-active or obsolete. Apart from this, the Company will also review products that have a remaining life span of less than 18 months or less. Once identified and confirmed, these stock will be physically cut and discarded after an inventory disposal request form has been prepared and approved by at least two of the company personnel. The IRB was provided with a list of stock written off and the disposal request form to support the claim for deduction. The taxpayer has also explained that the company is in the business of medical products which requires high level of sterility, etc for use in the human body. Although there remains a certain period of life span for these products, these products are no longer marketable and saleable to hospitals and medical establishments. In spite of the explanation and documentation provided, IRB disallowed the claims for the stock written off on the grounds that the product life had not expired as at the year end even though the product has been cut and discarded. The IRB was unable to advise on the exact documentation or what is required to substantiate the claim.

Appendix 2

Proposed Framework for Tax Audits

1. Introduction

1.1 Purpose of the framework

1.1.1 This framework sets out the concepts that underlie the rights and responsibilities of the Inland Revenue Board (IRB) officers/auditors and that of taxpayers in the event of a tax audit. The purpose of the framework is to:

1.1.1.1 assist the IRB officers to carry out their task efficiently and effectively.

1.1.1.2 assist the taxpayers in fulfilling their obligations.

1.2 Objective of tax audits

1.2.1 The primary purpose of a tax audit is to act as a tool for monitoring the self-assessment system. As such, it plays an important role in the achievement of the objectives of the IRB which are to collect the taxes imposed by law through the encouragement of voluntary compliance and to maintain public confidence in the integrity of the tax system.

1.2.2 The IRB auditor's functions are to determine whether the amount of tax has been properly reported and to assist the taxpayer in gaining a correct understanding of the law. Care should also be taken to inform the taxpayer regarding his rights and obligations in connection with such determinations. The auditor should be mindful that it is the IRB's goal to administer the laws fairly and uniformly with minimal disruption to the business operations of the taxpayer.

1.3 General principles of tax audits

1.3.1 The tax audit must be conducted in a professional manner by an IRB officer who is familiar with accounting processes and generally accepted accounting principles.

1.3.2 To avoid any conflict of interest, the IRB officer must not have any personal relationship with the taxpayer, the taxpayer's family or the taxpayer's employees. Additionally, the IRB officer must not have any personal or financial interest whatsoever in a business that is being audited.

1.3.3 Throughout the course of the audit, the taxpayer is expected to receive fair, courteous, and professional treatment. There should be no occasion for the IRB officer to harass or to impress upon the taxpayer that the object of the audit is to find something wrong with the filed returns.

1.3.4 To conduct the tax audits in an impartial, fair, reasonable and professional manner, the IRB officers should:

1.3.4.1 treat all taxpayers fairly in accordance with the laws and regulations existing in Malaysia.

1.3.4.2 outline the audit process and, where appropriate, endeavour to guide the taxpayers through the process.

1.3.4.3 seek to minimise cost and inconvenience to the taxpayers.

2. Rights and obligations

2.1 IRB

2.1.1 The Director General of Inland Revenue (DGIR) can require a person to provide information, to attend and give evidence, or to produce any books, documents, records or other papers in the custody of or under the control of that person as provided for under Sections 78, 80 and 81 of the Income Tax Act, 1967.

2.1.2 Should taxpayers be required under the law to attend a formal interview, the IRB officer will provide taxpayers with an explanation, before the interview, that the law obliges the taxpayers to answer questions put to the taxpayers during the interview.

2.1.3 The taxpayers have the right to have their tax adviser/ agent present. In this situation, the taxpayers will be given a reasonable opportunity to consult with their tax adviser/ agent who can also assist in answering a relevant question put forward by the IRB officer.

2.1.4 If a taxpayer brings an interpreter to a formal interview because the taxpayer does not speak Bahasa Malaysia or English, the taxpayer is allowed to answer through the interpreter.

2.2 Taxpayers' rights

2.2.1 The taxpayer has the right to know why certain information is being requested, how such information will be used and the consequences of failing to submit the information. Disclosure of information obtained from a tax return or during the course of an audit to any unauthorised person is strictly prohibited.

2.2.2 Taxpayers may retain representation at any time during the audit and have the right to suspend a meeting or interview at any time in order to retain such representation. The tax adviser/agent must have the proper written authorisation to act on the taxpayers behalf in his absence.

2.2.3 The IRB officer cannot suggest that a taxpayer consider not engaging a tax adviser/agent. The IRB officer also should not provide any indication or suggestion to a taxpayer as to who would be best able to represent the taxpayer (no names of tax agents or call cards can be provided or given to a taxpayer).

2.3 Taxpayers' obligations

2.3.1 The taxpayer should:

2.3.1.1 provide the IRB officers with access to (and make copies of or take extracts of) records and documents in the custody of or belonging to the taxpayer. IRB officers should first review the primary records of the taxpayer. They can only request for access to the external auditor's working papers if deemed absolutely necessary. (Further details on this is contained in the Public Ruling 4/2000-Revised: Keeping Sufficient Records-Companies & Co-operatives).

2.3.1.2 provide the IRB officers with full and free access to buildings and premises and provide reasonable facilities and assistance. (Further details on this is contained in the Public Ruling 7/2000: Providing Reasonable Facilities and Assistance).

2.3.1.3 provide complete responses to requests for information.

2.3.1.4 be truthful and honest in dealings with the IRB officers.

3. Procedures of a tax audit

3.1 Notification of a tax audit

3.1.1 Tax audits are scheduled in advance to allow enough time for a taxpayer to assemble the required records. If taxpayers are selected for a field audit, the initial contact will be made by letter or fax and subsequently followed by a telephone call to set up the initial appointment. The taxpayer will then receive a letter or fax confirming the appointment and describing the books and records that are to be made available. A copy of the letter should also be sent to the taxpayer's tax adviser/agent. The period between the initial contact and the date of the audit should be a minimum of 2 weeks. Under normal circumstances, an audit at the business premises of a taxpayer would normally involve one year of assessment and the IRB officer would be present at the taxpayer's premises for 2 to 3 days.

3.1.2 The written notification should:

3.1.2.1 inform the taxpayer of the name and telephone number of the IRB officers who would be conducting the audit.

3.1.2.2 state the expected nature, scope, duration of the audit, and indicate the information and records that will be required.

3.1.2.3 inform the taxpayers that they may have a tax adviser/agent present at the start or at any stage of the audit. If taxpayers need to discuss with their tax adviser/agent, the taxpayers will be given reasonable time and opportunity to do so.

3.1.2.4 inform the taxpayers about their rights and obligations relating to the audit.

3.1.3 If, on the appointed date, the taxpayer has some urgent matters to attend to, then that appointment can be postponed to another mutually agreed date. Notwithstanding this, the taxpayer should not cause any undue delay.

3.2 Commencement of the tax audit

3.2.1 At the initial interview, the IRB officer should:

3.2.1.1 provide the relevant identification and a telephone contact number (unless this has already been done).

3.2.1.2 make clear the audit approach and procedures, explain the audit process, outline appeal procedures as well as the rights and obligations of the taxpayer.

3.2.1.3 inform the taxpayer about the name and telephone number of the senior officer in charge of the tax audit.

3.2.1.4 give the taxpayer an opportunity to volunteer information about any possible irregularity or omission in relation to their tax affairs. If the taxpayer does this, the penalty that may otherwise have been imposed would be reduced.

3.3 During the tax audit

3.3.1 The IRB officers should:

3.3.1.1 try to arrange any interviews or meetings at times and places which are mutually convenient, usually during normal business hours.

3.3.1.2 give an explanation on the purpose of any interview or visit.

3.3.1.3 ask clear and unambiguous questions and give the taxpayer reasonable assistance and explanations to clarify their meaning.

3.3.1.4 enable the taxpayer to choose someone to act on their behalf or to attend interviews with the taxpayer.

3.3.1.5 provide the taxpayers reasonable time to collect records and documents for examination and to gather information on any outstanding matter.

3.3.1.6 respond to any reasonable and relevant questions that the taxpayers ask relating to the audit.

3.3.1.7 allow the taxpayers to make notes of any conversation or interview.

3.3.1.8 if the taxpayers request or where the IRB officers consider it reasonable to do so, allow a tape recording of the interviews. A copy of the audio tape will be provided to the respective parties, free of charge, at the conclusion of the interview.

3.3.1.9 if the taxpayers request, give the taxpayers a signed copy of the IRB officer's written record of interview. If the IRB officers ask the taxpayers to sign the record of the interview, the IRB officers should make clear the implications of doing this.

3.3.1.10 allow the taxpayer to have sufficient time to consider before signing any relevant document/ statement. Under no circumstances should the IRB officer imply that non-signing of the document will prejudice the conclusion of the audit. If a taxpayer does not sign the document/ statement, it should not be construed as non-cooperation on the part of the taxpayer in the tax audit.

3.3.1.11 give a written receipt for any records that the IRB officers collect in person at an interview and return the records upon completion of the audit. However, all efforts will be made to complete an audit at the business premises of the taxpayer within the stipulated time frame. If absolutely necessary, copies of the records can be made with the agreement of the taxpayer.

3.3.1.12 use discretion if and when the IRB officers make any enquiries of third parties and do so without any inference of wrongdoing by the taxpayers.

3.3.1.13 allow the taxpayers the opportunity to give their views on any relevant issue, including any proposed adjustments, and will be mindful of the business practices and commercial reasons for specific action taken by taxpayers.

3.3.1.14 keep the taxpayers informed of the progress of the audit. (Generally, the time frame for the conclusion of a tax audit should not be more than 3 months from the commencement of the field audit).

3.3.2 Where it is deemed absolutely necessary to have access to the external auditor's working papers, the IRB officer should give a minimum notice period of seven (7) days to the external auditor.

3.4 At the completion of an audit (post –audit meeting)

3.4.1 The IRB officers should:

3.4.1.1 clearly explain the findings and basis of any adjustments made as a result of the audit. Findings may include recommended changes in record keeping practices to correct accounting errors found during the audit, an explanation of the proper interpretation of the Income Tax Act, 1967 in areas where errors were made, a notice of additional taxes due or a notification that a refund is due. If the audit results in a refund, the IRB officer will provide the necessary assistance. An acknowledgement letter will be sent for any audit which does not result in any adjustment.

3.4.1.2 explain the reasons for any penalty and how this will be calculated. Under no circumstances should an IRB officer impose a higher penalty merely because the taxpayer disagrees with the proposed penalty/adjustment made by the IRB officer.

3.4.1.3 provide the taxpayers the chance to clarify any circumstances which the taxpayers believe could justify a reduction of any penalty.

3.4.1.4 give the taxpayers a written notification of the outcome of the audit as soon as possible. The taxpayer should be given an adequate time period to respond to the proposed audit adjustments. In general, a period of 3 to 4 weeks would be allowed.

3.4.1.5 notify the taxpayers of their right to appeal and the remedies that may be available to them.

3.4.1.6 highlight to the taxpayers' any matters that will assist the taxpayers to understand and meet their taxation obligations in the future.

3.4.2 If the taxpayer agrees with the adjustments but cannot pay the additional tax in full, a settlement meeting will be arranged between the taxpayer and the IRB officers for a deferred installment payment.

3.4.3 Disagreement with the audit findings should be indicated in the post-audit meeting notes and returned to the senior officer of the IRB auditor. Such reports are reviewed carefully by the supervisory personnel so that additional meetings can be held with the senior officer, if desired, before the final Notice of Additional Assessment (Form JA) is issued, where applicable. (Further details on the process of appeal after the Notice of Additional Assessment is served, is contained in Public Ruling No 3/2001-Appeal Against An Assessment).

3.4.4 Once the audit is completed, the field audit exercise should not be repeated for the same year of assessment.

4. Penalties and offences

4.1 In carrying out tax audits, the IRB officers may find out that the taxpayers have underpaid their tax or received a refund which is more than the taxpayers are entitled to.

4.2 Generally, the Income Tax Act, 1967 provides for penalties to be imposed where the requirements of the law have not been met. Different rates of penalties can be imposed based on the degree of culpability involved. Nevertheless, the taxpayer may appeal against a penalty imposed in certain circumstances based on the merits of the case.

4.3 The Income Tax Act, 1967 also provides for prosecution action to be undertaken for a range of taxation related offences.

5. Complaints

5.1 If the taxpayer is dissatisfied with the manner in which an audit is being carried out, including the concern about any apparent delays or the length of time involved in the process, the taxpayer should make this concern known to the IRB officer.

5.2 The taxpayer should raise his concern with that officer's superior if the issue cannot be resolved.

5.3 The taxpayer may make a complaint to the DGIR in writing if the taxpayer is still not satisfied with the outcome.

5.4 If the taxpayer wishes to make a complaint about the behaviour of a IRB officer, the taxpayer should speak to that officer's superior. The IRB officers should discuss the matter with the taxpayer and try to resolve it amicably.

5.5 In dealing with a complaint against an IRB officer, the IRB is committed to act fairly. The IRB will take an objective, fair and balanced approach and will apply the principles of natural justice and procedural fairness for all parties.

Appendix 3

Proposed Framework for Tax Investigations

Preamble

To create and maintain public confidence in the tax administration system, the tax system must be fair, transparent and equitable. Compliance with the tax legislation must be strictly enforced and tax offences such as non-compliance and tax evasion should be penalised. The Inland Revenue Board (IRB) carries out tax investigations (civil investigations) as one of its measures of enforcement. In addition, a Criminal Investigation Division (CID) has been established by the IRB. The CID's main objective is to prove, where deemed necessary, whether an offence has been committed, to ascertain the person responsible for the offence and to pursue criminal prosecution. Both civil and criminal investigations are complementary measures of enforcement and such measures must be exercised judiciously.

The framework below endeavours to outline the objective and general principles of tax investigations, the rights and obligations of the IRB and the taxpayer, the procedures involved, penalties and avenues of complaints, if applicable.

1. Introduction

1.1 *Purpose of the framework*

1.1.1 This framework explains how the investigation officers conduct tax investigations in practice which is separate and distinct from tax audits (refer to Framework for Tax Audit for further details). The purpose of the framework is to act as a guide to:

1.1.1.1 Ensure the investigation officers carry out their tasks efficiently, effectively and consistently in accordance with the legislation; and

1.1.1.2 Ensure the taxpayers' rights and obligations are safeguarded in the event of tax investigations.

1.2 *Objective of tax investigations*

1.2.1 The IRB recognises that errors in tax returns can be caused by honest mistakes, carelessness or intentional disregard of the law.

1.2.2 The primary purpose of a tax investigation is to ensure that the appropriate amount of tax is collected where it is suspected that a taxpayer is deliberately trying to avoid paying tax or has committed an act of wilful evasion.

1.3 *General principles of tax investigations*

1.3.1 The tax investigations must be conducted in a professional, courteous, fair and reasonable manner by an investigation officer who is familiar with the tax laws and generally accepted accounting principles.

1.3.2 To avoid any conflict of interest, the investigation officer must not have any personal relationship with the taxpayer, the taxpayer's family or the taxpayer's employees. Additionally, the investigation officer must not have any personal or financial interest whatsoever in a business being investigated.

1.3.3 The tax investigation should seek to minimise disruption to the business operations of the taxpayer. Records and documents taken by the investigation officers during the investigation should be returned to the taxpayer as soon as possible but not later than one month after completion of the investigation.

2. Rights and obligations

2.1 *Inland Revenue Board*

2.1.1 The Director General of Inland Revenue (DGIR) can require a person to provide information, to attend and give evidence, or to produce any books, documents, records or other papers in the custody of or under the control of that person as provided under Sections 78, 80 and 81 of the Income Tax Act, 1967.

2.1.2 The IRB is not obligated to reveal the information that has given rise to the suspicion of serious fraud or wilful default. The investigation officer is required to deal with the taxpayers in a professional, fair and courteous manner during the whole investigation process.

2.1.3 Should taxpayers be required under the law to attend a formal interview, the investigation officers will provide taxpayers with an explanation, before the interview, that the law obliges the taxpayers to answer questions put to the taxpayers during the interview.

2.1.4 The taxpayers have the right to have their tax agents present. In this situation, the taxpayers will be given a reasonable opportunity to consult with their tax agents who can also assist in answering relevant questions put forward by the investigation officer.

2.1.5 If taxpayers bring an interpreter to a formal interview because the taxpayers do not speak Bahasa Malaysia or English, the taxpayers are allowed to answer through the interpreter.

2.2 *Taxpayer*

2.2.1 The taxpayer has the right to know the consequences of failing to submit the information. Disclosure by the investigation officers of any information obtained from a tax return or during the course of an investigation to any unauthorised person is strictly prohibited.

2.2.2 Taxpayers may retain representation at any time during the investigation and have the right to suspend a meeting or interview at any time in order to retain such representation. Tax agents must have the proper written authorisation to act on the taxpayers' behalf in his absence. Where existing tax agents continue to represent the taxpayers in an investigation, no additional letter of authority will be necessary from the taxpayers.

2.2.3 The investigation officer cannot prohibit the appointment of any tax agents by the taxpayer during the course of the investigation. A taxpayer may be represented by a team of advisers, acting individually or collectively. The investigation officer should not provide any indication or suggestion to a taxpayer as to who would be best able to represent the taxpayer (no names of tax agents or call cards can be provided or given to a taxpayer).

2.2.4 The taxpayer is obligated to :-

2.2.4.1 provide the investigation officers with access to (and make copies of), records and documents in the custody of or belonging to the taxpayer;

2.2.4.2 provide the investigation officers with full and free access to buildings and premises and providing reasonable facilities and assistance;

2.2.4.3 provide complete responses to requests for information; and

2.2.4.4 co-operate with the investigation officers.

3. Procedures of a tax investigation

3.1 *Commencement of tax investigation*

3.1.1 During the visit, the investigation officer should:

3.1.1.1 explain the purpose of the visit, expected scope and duration of the investigation, and indicate the information and records that will be required;

3.1.1.2 inform the taxpayers of the name and telephone number of the investigation officers, including the senior officer who would be overseeing the investigation;

3.1.1.3 inform the taxpayers that they may have a tax agent present at the start or at any stage of the investigation. If taxpayers need to consult with their tax agents, the taxpayers will be given reasonable time and opportunity to do so. The investigation officer should not suggest to the taxpayers as to who would be best able to represent the taxpayer (no names of tax agents or call cards can be provided or given to the taxpayers). Unless advised otherwise by the taxpayer, the existing tax agent will represent the taxpayer during the investigation, in which case no additional letter of authority will be necessary from the taxpayer;

3.1.1.4 outline the rights and responsibilities of the taxpayer;

3.1.1.5 provide reasonable time for taxpayers to collate documents, records and papers to assist in the investigation;

3.1.1.6 provide a written acknowledgement of the records and documents taken by the IRB;

3.1.1.7 provide the taxpayer an opportunity to volunteer information about any possible irregularity or omission in relation to their tax affairs. If the taxpayer does this, the penalty that may otherwise have been imposed would be reduced; and

3.1.1.8 refrain from requesting an advance payment of tax from the taxpayer.

3.2 D*uring the tax investigation*

3.2.1 The investigation officers should:

3.2.1.1 seek to arrange any interviews or meetings at times and places that are mutually convenient, during normal business hours;

3.2.1.2 ask clear and unambiguous questions and provide the taxpayers with all reasonable assistance and explanations to clarify their meaning;

3.2.1.3 allow the taxpayers to choose someone to act on their behalf or to attend interviews with the taxpayers. Where the existing tax agent is representing the taxpayer, a separate letter of authority is not required to liaise with the IRB;

3.2.1.4 answer any reasonable and relevant questions that the taxpayers ask relating to the investigation;

3.2.1.5 allow the taxpayers to take notes of any conversation or interview;

3.2.1.6 if the taxpayers request a tape recording of the interviews to be carried out, the investigation officer should allow such recordings. A copy of the audio tape will be provided to the taxpayers, free of charge, at the conclusion of the interview;

3.2.1.7 if the taxpayers request, provide the taxpayers with a signed copy of the investigation officer's written record of interview. If the investigation officer asks the taxpayers to sign the record of the interview, the investigation officer should explain the implications of doing this;

3.2.1.8 use discretion if and when the investigation officers make any enquiries of third parties and do so without any implication of wrongdoing by the taxpayers;

3.2.1.9 allow the taxpayers the opportunity to give their views on any relevant issue, including any proposed adjustments, and will be mindful of the business practices and commercial reasons for specific action taken by taxpayers;

3.2.1.10 if the taxpayers request, return all non-essential documents except those relating to the investigation issues. Where the documents are no longer required by the IRB, the documents should be returned to the taxpayer as soon as possible. Where the taxpayers require documents still in the possession of the IRB, the investigation officer should allow the taxpayers to make the relevant copies; and

3.2.1.11 keep the taxpayers informed of the progress of the investigation.

3.3 *Completion of tax investigation*

3.3.1 The investigation officers should:

3.3.1.1 clearly explain the findings and basis of any adjustments in writing made as a result of the investigation;

3.3.1.2 explain the reasons for any penalty and how this will be calculated. Under no circumstances should the investigation officer impose a higher penalty if the taxpayer disagrees to a proposed penalty/adjustment made by the investigation officer;

3.3.1.3 provide the taxpayers the opportunity to clarify any circumstances which the taxpayers believe could justify a reduction of any penalty; and

3.3.1.4 inform the taxpayers of their right to appeal and the remedies that may be available to them.

3.4 *Finalisation of tax investigation*

3.4.1 The IRB should endeavour to finalise the tax investigation cases within a period of 6 months after the initial visit. This will include the signing of the settlement agreement by the designated IRB officer. Where it is anticipated that the said period will not be met, the investigation officer will inform the taxpayer accordingly indicating the reason for the delay and the expected finalisation date. If the extended period has expired and no further response is received from the IRB within 3 months from the extended period, the investigation should be deemed finalised. Where there are no additional tax liabilities arising from an investigation, the IRB shall proceed to finalise and close the case.

3.4.2 Any negotiations or correspondence between the IRB and the tax agents will be entered on a totally "without prejudice" basis.

3.4.3 Upon reaching final agreement, a written settlement agreement will be entered into between the IRB and the taxpayer. The settlement agreement must be signed and dated by the investigation officer and taxpayer and shall include the following information:-

3.4.3.1 name, address and tax reference number of the taxpayer;

3.4.3.2 period covered by the tax investigation;

3.4.3.3 the amount of tax undercharged and penalties; and

3.4.3.4 the installment payment/scheme in respect of the tax undercharged and penalties, where applicable

3.4.4 Upon signing the settlement agreement, the IRB will issue a composite assessment under Section 96A of the Income Tax Act, 1967 within 14 working days from the date of the agreement.

3.4.5 Where an agreement cannot be reached and an assessment is issued by the IRB, the dispute will be resolved following the appeal process provided for in the Income Tax Act, 1967.

3.4.6 If the taxpayer agrees with the adjustment but is unable to pay the additional tax in full, a settlement meeting will be arranged between the taxpayer and the investigation officer for a deferred installment payment.

3.4.7 If there is a settlement meeting:-

3.4.7.1 the settlement agreements will be reached without any inducement or duress;

3.4.7.2 the terms of any settlement agreement reached will be documented and a copy will be provided to the taxpayer within 7 working days.

4. Penalties and offences

4.1 In conducting tax investigations, the investigation officers may determine that the taxpayers have underpaid their taxes or received refunds which are more than the taxpayers are entitled to.

4.2 Generally, the tax laws provide for penalties to be imposed where the requirements of the law have not been met. Where the tax undercharged arises from technical adjustments, no penalties should be imposed by the IRB.

4.3 The penalties imposed on all taxpayers should be fair and consistent and should depend on the degree of culpability involved.

4.4 Section 114 of the Income Tax Act, 1967 provides for prosecution action to be undertaken for tax evasion cases.

5. Complaints

5.1 If the taxpayer is dissatisfied with the manner in which a tax investigation is being conducted, including the concern about any apparent delays or the length of time involved, the taxpayer should make his concern known to the investigation officer.

5.2 The taxpayer should raise his concern with that investigation officer's senior officer if the issue cannot be resolved.

5.3 The taxpayer may make a complaint to the DGIR in writing if the taxpayer is still not satisfied with the outcome.

5.4 If the taxpayer wishes to make a complaint about the behaviour of an investigation officer, the taxpayer should speak to that investigation officer's senior officer. The investigation officers should discuss the matter with the taxpayer and try to resolve the matter amicably.

5.5 In dealing with a complaint against an investigation officer, the IRB is committed to act fairly. The IRB will take an objective, fair and balanced approach and will apply the principles of natural justice and procedural fairness for all parties.

C Dialogue with the Inland Revenue Board on 2007 Budget Proposals

1.0 A dialogue between the Inland Revenue Board (IRB) and representatives of MICPA, MIA, MIT, MAICSA, MATA and MACS was held on October 5, 2006.

2.0 2007 BUDGET PROPOSALS - INCOME TAXATION

2.1 Review of Company Income Tax Rate

The Institutes welcome the pleasant surprise of a reduction in the corporate tax rate to 27% in year of assessment 2007 and 26% by year of assessment 2008. This move is expected to promote greater private sector investment.

The Institutes wish to highlight the following:-

(a) the reduction of the tax rate to 27% is evidenced by clause 30(a)(ii) of the Finance Bill 2006 (Bill). However, the reduction of the tax rate to 26% was not mentioned in that clause. The reduction should be included in order to provide certainty, especially to foreign investors.

(b) pending the gazetting of the Bill, the Institutes wish to confirm that taxpayers are allowed to apply the new tax rates in their preparation of the revised and initial tax estimates for years of assessment 2007 and 2008 respectively.

(c) where the basis period of a company declaring a dividend is different from that of the shareholder company, a reduction in the tax rate for year of assessment 2007 would result in either a tax repayable or tax payable of 1% for the shareholder company.

For example:

- Situation 1 - Dividend Paid on 31/12/06

YA 2006 Company (y/e 31 Dec)	RM	YA 2007 Shareholder (y/e 31 Mar)	RM
Gross	100	Gross	100[i]
Tax deducted @ 28%	28	Tax @ 27%	27
Net Paid	72	S.110	28
		Tax repayable	1

- Situation 2 - Dividend Paid on 30/9/06

YA 2007 Company (y/e 31 Mar)		YA 2006 Shareholder (y/e 31 Dec)	
	RM		RM
Gross	100	Regross	99[iii]
Tax deducted @ 28%	28[ii]	Tax @ 28%	28
Net Paid	72	S.110 (regross)	27[iii]
		Tax repayable	1

i. *based on section* 108(3) *of the* Income Tax Act 1967 (*the* Act), *no regrossing is required as there is no revision in the tax rate in the basis period for a year of assessment when the dividend was paid i.e. in* YA 2006.

ii. *current corporate tax rate of* 28% *applies pending gazette of the* Bill.

iii. *based on section* 108(3), *the amount of dividend received shall be regrossed based on the formula of* 1/0.73 *x* 72 *and the difference between amount regrossed and the amount paid i.e.* RM27 (RM99 – RM72) *shall be the tax deducted* (*sec* 110).

Shareholders have to ensure regrossing is done for companies declaring dividend for year of assessment 2007 and where tax has been deducted at 28%. At present, dividend vouchers only show the accounting year end.

***Answer*:**

(*a*) T*he* IRBM *responded that the reduction of the corporate tax rate from* 27% *to* 26% *will be amended in the next finance bill.*

(*b*) T*he* IRBM *confirmed that the new* (*proposed*) *corporate tax rate can be applied pending the gazette of the* Bill.

(*c*) T*he* IRBM *responded that the example given above is a correct example.*

2.2 Review of Penalty on Withholding Tax

With effect from 2 September 2006, it has been proposed that the 10% penalty on withholding tax be imposed on the amount of unpaid tax instead of on the total gross amount paid to a non-resident.

The Institutes laud this move by the Ministry and the IRB as being a fair approach which would reduce the cost of doing business for the private sector.

The Institutes wish to confirm that the effective date of 2 September 2006 onwards refers to the date when the penalty is actually imposed. That is to say that penalty of 10% on the unpaid tax will apply even though the payment to the non-resident was made in say, January 2004.

***Answer*:**

The* IRBM *confirmed that the* 10% *penalty on withholding tax on the unpaid amount shall only be applicable for the payment due and payable on or after* 2 *September* 2006. *If the payment is due and payable prior to* 2 *September* 2006 (*for example, the* 30 *days fall on* 30 *August* 2006), *then the old provisions will apply.

2.3 Tax Audit and Investigation Framework

It has been proposed that the existing Guide on Tax Audit be updated and the framework for tax investigation be issued by the IRB. This proposal is effective from 1 January 2007.

The Institutes welcome the proposal. The framework will assist to maintain and enhance public confidence in the tax administration. The Institutes will revert with comments on the draft framework received and hopes that a dialogue will be convened to discuss the comments. Issues relating to tax audits and investigations have been forwarded earlier to the IRB on 21 July 2006 and the dialogue date has yet to be confirmed.

***Answer*:**

The* IRBM *responded that the above matter will be discussed in a separate dialogue which will be confirmed later.

2.4 Public Rulings

The proposed new Section 138A of the Act empowers the Director General (DG) of the Inland Revenue to make a public ruling on the application of any provision to any person or class of persons or to any arrangements. .

The Minister of Finance is also empowered under the proposed Section 154(1)(eb) and (ec) of the Act to provide for the scope and procedures relating to public rulings.

The Institutes would like to highlight the following issues:-

(a) a definition of "public ruling" and "arrangement" should be included in the Act.

(b) does the introduction of Section 138A remove the right of appeal accorded to taxpayers under Section 99 of the Act. That is to say that where a taxpayer disagrees with an

assessment which has been made or deemed to have been made based upon a ruling, the normal appeal provisions in the Act will still apply.

(c) based on Section 138A(3), the public ruling is binding on the DG and only binding on the taxpayer if the taxpayer applies the said ruling. If the taxpayer chooses not to apply the ruling, would the taxpayer need to indicate the reasons for such an action in the submission of the tax return? In the event of a tax audit, no penalty should be imposed where a disclosure was made by the taxpayer.

(d) as a public ruling is only binding on the DG, the requirement to indicate compliance with public rulings in tax returns will not be applicable.

***Answer*:**

(*a*) T*he* IRBM *responded that a* P*ublic* R*uling will be issued on this matter pending the issuance of* R*ules on the scope and procedure to be prescribed by the* M*inister. T*he *definition of these terms will be addressed either in the said rules or* P*ublic* R*uling.*

(*b*) T*he* IRBM *responded that the right of appeal still remains (i.e. appeal on the assessment and not on the* P*ublic* R*uling).*

(*c*) N*o. T*he *taxpayer need not indicate the reason. T*he *taxpayer only needs to indicate whether he applied the* P*ublic* R*uling or not. T*he *issue of penalty will be clarified in the "tax audit framework". H*ow*ever, the taxpayer is free to indicate reasons for non-compliance to a public ruling in the covering letter enclosing the tax return.*

(*d*) T*he indication on the tax return is only for* IRBM *tax administration purposes. T*he IRBM *assured that the indication of non-compliance with the public ruling is not the only factor leading to selection for an audit.*

2.5 Advance Rulings

In order to promote clarity and certainty in the interpretation and application of the tax law, Section 138B of the Act has been introduced to allow taxpayers to request for an advance ruling with effect from 1 January 2007. The Minister of Finance is also empowered under the proposed Section 154(1)(eb) and (ec) of the Act to provide for the scope and procedures relating to the rulings (advance and public) as well as prescribe the fees to be charged for an advance ruling.

The Institutes welcome the introduction of an advance ruling system which is necessary as Malaysia is under a full self-assessment system of taxation. However, the Institutes would like to seek confirmation on and highlight the following issues:-

(a) as with Section 138A, we understand that the introduction of Section 138B does not remove the right of appeal accorded to taxpayers under Section 99 of the Act. That is to say that where a taxpayer disagrees with an assessment which has been made or deemed to have been made based upon the application of a ruling, the normal appeal provisions in the Act will still apply.

(b) the taxpayer has the option not to follow the advance ruling if he disagrees with it. We note however that Section 138B(5) appears to indicate that the taxpayer has no such option and must follow the advance ruling issued, whether favourable or not.

(c) section 138B(3) should be deleted. The inclusion of this provision does not provide taxpayers with certainty. Section 138B(6) should suffice as it provides very clearly the various circumstances in which an advance ruling issued by the IRB would fail to apply.

***Answer*:**

(*a*) T*he* IRBM *responded that the right of appeal still remains (i.e. appeal on the assessment and not on the* P*ublic* R*uling).*

(*b*) Y*es. It is binding on the taxpayer but the taxpayer can appeal under the normal appeal procedure.*

(*c*) T*he* IRBM *responded that section* 138B(3) *and section* 138D(6) *are different as section* 138B(3) *is in respect of withdrawal and section* 138B(6) *is in respect of non-application. Section* 138B(3) *is an enabling provision allowing the* D*irector* G*eneral of* IRBM *to withdraw ruling in cases where there is a justifiable reason.*

In view of the approaching effective date, we would urge the authorities to expedite the issuance of a guideline on the advance rulings system which would set out, amongst others, the application procedures, processing time and fee structure. We hope the following issues would be considered in the finalisation of the guideline:-

(a) the amount of prescribed fees to be charged should be reasonable. Such fees imposed should be an allowable deduction to the company.

(b) the processing time should be reasonable. The IRB should endeavour to provide a ruling within 8 weeks or earlier. However, where a delay is anticipated especially in a complex request, the taxpayer must be informed accordingly on a timely basis.

The Institutes propose that an opportunity be provided for the Institutes to provide comments on the draft guidelines before these are finalised.

***Answer*:**

***Rules will be prescribed by the* Minister. *It is the decision of the* Ministry of Finance *whether draft guidelines will be provided to the* Institute for comment.**

2.6 Review of Incentives for Biotechnology Industry

The 2007 Budget has proposed, amongst others, the following new incentives to enhance the biotechnology industry:

- a bionexus company be given a concessionary tax rate of 20% on income from qualifying activities for 10 years upon the expiry of the tax exemption period;
- a company or an individual investing in a bionexus company be given a tax deduction equivalent to total investment made in seed capital and early stage financing.

The Institutes would like to seek clarification on the following:

(a) the definition of "seed capital financing" and "early stage financing". Would the definition of both terms be the same as that defined under the Income Tax (Deduction for Investment in a Venture Company) Rules 2005?

(b) whether existing companies already engaged in biotechnology would qualify for the new incentives. If so, whether these companies will be granted approval retrospectively.

***Answer*:**

(a) The* IRBM *clarified that both terms are applicable for incentives in the biotechnology industry.

(b) Yes, if the company expands its existing biotechnology activity.

The company can apply for either:

(i) Exemption of statutory income for 5 years commencing from the first year the company has a statutory income and shall not be earlier than the year of assessment the approval is given by the Minister; or

(ii) Tax Allowance for 5 years commencing from the first qualifying capital expenditure and that date shall not be earlier than the date of application to Malaysian Biotechnology Corporation.

2.7 Promotion of Malaysian Brand Name

It has been proposed that double deduction on expenses incurred on advertising Malaysian brand names be extended to a company within the same group that has incurred the advertising expenditure, subject to the conditions that the company must be owned more than 50% by the registered proprietor of the Malaysian brand name and the deduction can only be claimed by one company in a year of assessment.

The Institutes wish to propose that the double deduction be extended to any company within the same group regardless of shareholding. The restriction to one company with 50% ownership will only cause inflexibility for the group of companies especially where the registered brand name owner is not the holding company.

Answer:

The IRBM responded that the above matter is a policy decision. However, the IRBM clarified that the double deduction will still be applicable where the company which incurred the expenditure owns more than 50% of the registered proprietor of the brand name.

2.8 Income Tax Exemption for Islamic Banking and Takaful Business

It has been proposed that full tax exemption for 10 years be given under the Act to the following:-

(i) Islamic banks and Islamic banking units licensed under the Islamic Banking Act 1983 on income derived from Islamic banking business conducted in international currencies; and

(ii) takaful companies and takaful units licensed under the Takaful Act 1984 on income derived from takaful business conducted in international currencies.

The Institutes wish to clarify the following:-

(a) the meaning of "Islamic banking business conducted in international currencies" i.e. which type of activities are included?

(b) the basis of apportionment of common expenses incurred between conventional and Islamic banking units (transacting in foreign currencies).

***Answer*:**

(a) The* IRBM *clarified that* Islamic *banking business conducted in international currencies qualifying for the incentive are commercial banking business, investment banking business and other banking businesses in* Malaysia *as may be specified by* Bank Negara Malaysia. *The activities include dealing in international foreign currencies, taking deposits, providing financing facilities, providing investment banking services and investing in securities and properties* (Please *refer to the* Guidelines on the Establishment of International Islamic Bank*).

(b) The* IRBM *clarified that the gross income is the acceptable basis for the apportionment of the common expenses incurred.

Rules will be issued on this matter.

2.9 Tax Exemption for Companies Managing Foreign Islamic Funds

It has been proposed that local and foreign companies managing funds of foreign investors established under the Shariah principle be given full income tax exemption on the management fees for 10 years. The Securities Commission must approve such funds.

The Institutes wish to clarify the following:-

(a) whether the term "fund" refers to collective investment schemes such as unit trust funds, private equity funds or foreign investors' monies being passed onto fund managers for investment.

(b) where the fund manager manages funds of both locals and foreigners, would the exemption be based on the net income from the services to the foreign investors? This means separate accounts would need to be maintained. How then would common expenses be apportioned between the two categories?

(c) what exactly would the Securities Commission be approving - the fund manager or the funds to be managed?

***Answer*:**

The* IRBM *responded that for issues (a) and (c), the matter will be clarified in the* Order *that will be issued soon.

The* IRBM *clarified that the tax exemption is granted on the statutory income derived from the services to the foreign investors. A separate account is required and the acceptable basis for the apportionment of the common expenses incurred would be on gross income.

2.10 Deduction on Expenses to Establish Islamic Stock Broking Company

It is proposed that expenses incurred prior to the commencement of an Islamic stock broking business be allowed as a deduction provided the company commences its business within a period of 2 years from the date of approval by the Securities Commission.

The Institutes would like to confirm whether All the pre-commencement revenue expenditures of an Islamic stock broking company such as professional and consultancy fees, etc be allowed as a deduction or is it only certain pre-commencement expenditure.

***Answer*:**

All pre-commencement expenses of a revenue nature would be deductable.

2.11 Review of Tax Treatment on Special Purpose Vehicle for Islamic Financing

It has been proposed that the Special Purpose Vehicle (SPV) established solely to obtain financing through the Islamic capital market would not be subject to income tax and therefore, not required to adhere to administrative procedures under the Act. The company that establishes the SPV would be given a deduction on the cost of issuance of the Islamic bonds incurred by the SPV.

The Institutes wish to clarify the following:-

(a) whether the above treatment would apply to SPVs under an Islamic Asset Backed Securities transaction. We also wish to propose that this treatment be extended to SPVs established for conventional financing activities.

(b) whether operating costs incurred by the SPV would be allowed to be claimed by the company that establishes the SPV. Thus, what is taxed on the company would be the net income of the SPV and if there is a loss, then the loss is claimable by the company.

***Answer*:**

(a) The* IRBM *responded that it is not applicable to* Asset Backed Securitisation *transactions.

(b) In principle, the company will be taxed on the net income of the* SPV. *Anyway,* IRBM *will seek further clarification/ confirmation from the* Ministry *on this issue and will address the issue in the legislation.

2.12 Incentive for Banks to Set Up Operations Overseas

It is proposed that tax exemption is available to Malaysian-owned banks for 5 years on profits derived from newly established branches overseas or remittances of new overseas subsidiaries.

The Institutes would like to clarify the following:

(a) whether this incentive is extended to all types of banks such as investment banks, Islamic banks, etc.

(b) whether there would be any restrictions on the type of operations carried out by the overseas subsidiaries to qualify for this incentive.

(c) the proposal is effective from 2 September 2006 until 31 December 2009. We wish to confirm that this period refers to the period within which the applications are made to Bank Negara Malaysia.

***Answer*:**

(a) The* IRBM *clarified that this incentive is granted to all types of bank.

(b) The* IRBM *clarified that exemption is given only for banking business.

***(c) Yes. The period refers to the period within which the application is made to the* Bank Negara Malaysia.**

2.13 Review of Incentives for Real Estate Investment Trusts (REIT)

Based on clause 30(b) of the Bill, income tax shall be charged on the following unit holders as below:-

Type of Unit holder	Tax Rate
(i) Institutional investor	20%
(ii) Resident/Non resident company	27%
(iii) Unit holder other than (i) and (ii) above	15%

"Institutional investor" has been defined to mean a pension fund, collective investment scheme or such other person approved by the Minister.

The Institutes wish to clarify the following issues:-

(a) the Budget Speech (Appendix 22) refers to "foreign institutional investors" whilst clause 30(b) has no such reference.

(b) the different rates of tax for different investors will only cause a greater administrative burden for the REIT.

(c) resident individuals will be taxed at the rate of 15% which is a final withholding tax. As it is a final withholding tax, are individual taxpayers required to declare the income received from the REIT in their personal tax returns?

***Answer*:**

(a) The IRBM clarified that the law will be amended to give effect to the proposal.

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

(c) The IRBM clarified that an individual taxpayer is not required to declare the income from REIT because it is a final tax.

Section 110 set-off is not applicable as the withholding tax is imposed on income distributed out of the total income exempted in the hands of REIT.

IRBM agreed that subsection 109D(5) need to be reviewed as this subsection is not applicable to tax deducted under S109D.

2.14 Local Leave Passage

2.14.1 The following has been proposed:-

(a) local leave passage costs which is exempted from tax for employees be extended to include expenses on meals and accommodation.

(b) the provision of a benefit or amenity to an employee consisting of a leave passage to facilitate a yearly event within Malaysia which involves the employer, employee and the immediate family members of that employee be allowed as a deduction.

In view of the above proposal, the Institutes wish to highlight that Public Ruling 1/2003 on Tax Treatment of Leave Passage and Public Ruling 3/2004 on Entertainment needs to be updated accordingly.

***Answer*:**

The* IRBM *took note of the above matter. The relevant Public Ruling will be amended accordingly.

2.14.2 Based on the Minutes of the Technical Dialogue with the IRB on 15 March 2006, Item 6.3 clarified that where family day expenses include travel expenses, food and accommodation, only expenses relating to provision of food and accommodation is allowable. With this clarification and proposal (b) above, the Institutes wish to confirm that family day (yearly event) expenses such as travel, food and accommodation (for employer, employee and immediate family members) are now fully deductible to the employer with effect from year of assessment 2007.

***Answer*:**

Yes.

2.14.3 The Institutes also wish to highlight that there may be instances where there is more than one yearly event, especially in large organisations. Under such instances, would the employer have the option to select which trip would qualify for the deduction?

Further, due to the size of an organisation, different departments could organise such an event separately. Since this involves different employees, would the costs involved for all such events be fully deductible as collectively, any employee would only be involved in one such event?

***Answer*:**

The* IRBM *confirmed that the cost incurred for all "family days" organised by the employer will be fully deductible.

2.14.4 In addition, the Institutes wish to confirm that there is no requirement for the "yearly event" to be organised every year in order to qualify for the deduction i.e. it could be organised in year 1 and year 3 and as such, the necessary deduction will be granted in the years concerned.

***Answer*:**

The* IRBM *confirmed that there is no requirement for the "yearly event" to be organised.

2.15 Special Tax Treatment for the Property Development and Construction Contract Business

It is proposed that special regulations be formulated and published in the Gazette for the property development and construction contract business. Some of the salient features of the regulations include the deductibility of expenses incurred during the defect liability or warranty period and the carry back of losses. This proposal is effective from year of assessment 2006.

The Institutes wish to clarify when the regulations will be issued and hope to be involved in its finalisation. Pending the issuance of the regulations, can taxpayers apply the proposal in completing their 2006 tax returns. The Institutes also wish to highlight that companies with January year ends would have submitted their 2006 tax returns by 30 August 2006. Therefore, these companies would not have been able to avail themselves of this new treatment. These companies should be allowed to revise their tax returns accordingly. What mechanism will be in place to allow this?

The Institutes also wish to reiterate the following points:-

Date of commencement of business

In the case where a new company has been incorporated and purchases land purportedly with the intention of carrying on a property development business, the actions taken by the company, and the timing of the subsequent actions may indicate for a fact whether a business has commenced. One should consider the ultimate purpose and intent of the company in acquiring the land before deciding whether the company has commenced business.

In the case of construction contracts, it is indicated in the Public Ruling 3/2006 that there are various circumstances which may be indicative of the commencement of a construction business. These include the date on which the contract is secured, letter of award offered, the date on which possession of a construction site is obtained or the commencement of an activity which constitutes part of a series of active activities such as the leveling of land.

The date of commencement of business for a contractor should not be limited to these circumstances alone as there are other activities carried out which are already indicative of the commencement of a business such as the date when the contractor's services are available for offer. Thus, greater flexibility must be exercised to review the circumstances for determining the date of business commencement.

Date of completion of a project or contract

Based on the Speech (Appendix 27), it is stated that in the case of property development, a project or phase is deemed completed when the temporary certificate of fitness for occupation or certificate of fitness for occupation is issued and in the case of construction contracts, a contract or project is deemed completed when a certificate of practical completion is issued or where no such certificate is issued, the date upon which the contract work is substantially completed.

We are of the opinion that the date of completion of a project or contract should be the date when the warranty/defects liability and/or maintenance period ends as the developers and contractors are still obligated to incur expenses during the warranty/defects and/or maintenance period.

Revision of estimates

Based on the Speech (Appendix 27), revision of estimates of gross profits can be allowed based on other commercial reasons which are acceptable to the DG. We wish to seek confirmation on this.

Interest Expense

Currently, interest expense incurred on money borrowed and employed in the production of gross income of a property developer is allowable and only interest attributable to the phases and projects, whichever is applicable, which produce income would be allowed as a deduction.

Where the business of a company has already commenced, such interest expenses incurred should be deductible regardless of whether the projects are income-producing or not. Interest paid on money borrowed to finance the projects should be allowed a tax deduction in the year it is incurred. The fact that it is for the purpose of the business means that Section 33(1)(a) of the Act applies to allow a deduction irrespective of whether the project has commenced producing income or where the interest expense is reflected in the accounts.

It is obvious that in situations where development has not commenced that interest expenses incurred would not be deductible on the basis that they are pre-commencement expenses. However, where business has already commenced, such interest expenses incurred should be deductible regardless of whether the projects are income-producing or not.

Guarantee fees

Currently, under the Public Ruling, a guarantee fee paid in respect of loan or bank facility granted to a property developer or construction contractor is a capital cost of raising funds and is not deductible. We are of the opinion that guarantee fees are akin to interest, and accordingly, should be accorded the same treatment as interest.

***Answer*:**

The issue will be discussed in a different forum later. Pending the issuance of the Regulations, the Public Ruling and IRBM's stand on issues pertaining to this industry apply.

2.16 Extending the Promoted Area

It is proposed that Perlis be declared as a promoted area and this is effected by clause 34 of the Bill. It is indicated in the Budget Speech (Appendix 30) that companies currently located in the promoted areas are eligible for Infrastructure Allowance of 100% of qualifying capital expenditure which can be set-off against 100% of the statutory income for each year of assessment.

The Institutes wish to highlight/clarify the following:-

(a) that the Promotion of Investments (Promoted Areas) Order 1994 [P.U.(A) 482/94] would also need to be amended (apart from the proviso to paragraph 3 of Schedule 7A) in view of the above proposal.

(b) based on Section 41B(2) of the Promotion of Investments Act 1986, the amount that can be exempted under the Infrastructure Allowance is 85% of statutory income, and not 100% of statutory income as stated in the Speech.

***Answer*:**

***(a) The* IRBM *clarified that the amendment will be made by the* Ministry of International Trade & Industry (MITI).**

(b) The* IRBM *confirmed that the* Infrastructure Allowance *is allowed as a deduction up to* 85% *of the statutory income of the business.

2.17 Widening the Scope of Deduction for Donations

Tax deduction under Section 44(6) of the Act has been proposed to include any gift of money or cost of contribution in kind made by companies towards sports activities approved by the Minister of Finance and sports bodies approved by the Commissioner of Sports as well as contributions for projects of national interest approved by the Minister of Finance. However, the deduction against aggregate income is still subject to a maximum of 7% of aggregate income.

The Institutes wish to seek clarification on the following:-

(a) the list of approved sports activities by the Minister of Finance.

(b) the meaning of "project of national interest" and some examples of such projects would be helpful.

To further encourage the participation of companies in corporate social responsibility programmes, it is suggested that the threshold of 7% should be totally removed.

***Answer*:**

The* IRBM *clarified that there will be no such list. The Minister will make a decision upon an application.

The threshold of 7% is a policy decision.

2.18 Tax Treatment of Perquisites

It has been proposed that tax exemption of up to a maximum amount or value of RM1,000 be given to each employee for a year of assessment on service awards received by the employee. It is also proposed that the exemption in respect of long service award shall only be given to employees who have served the same employer for more than 10 years.

The Institutes would like to seek clarification whether the above exemption would be extended to employees who have served at least 10 years with companies within the same group as defined under the Companies Act, 1965. The Institutes would also suggest that guidance be given as to how the IRB would determine the value of an award which is not in monetary terms. It is suggested that although an employer incurs RM500 on an award, such an award may not have a second hand value (as it is engraved with the name of the employee, etc) and as such, attributing a value is unnecessary.

***Answer*:**

The* IRBM *will confirm with the* Ministry of Finance *whether the "same employer" includes "companies within the same group".

The amount exempted is the cost of the award and the maximum amount is as proposed.

2.19 Review of Tax Incentive for the Purchase of Computers

It is proposed that the rebate of RM500 be amended to a tax relief of up to RM3,000 which will be given once in 3 years. This proposal is effective from year of assessment 2007.

The Institutes wish to confirm the following:-

For example:

An individual has bought a computer in year 2004 and has claimed a rebate of RM400 in his YA 2004 tax return. He is thinking of purchasing a new computer in 2007.

He should be able to claim a relief of up to RM3,000 for the purchase of the computer in his YA 2007 tax return. If he happens to buy another computer in 2010, he should also be able to enjoy the relief in 2010.

***Answer*:**

Yes. The individual may claim the relief in both years of assessment* 2007 *and* 2010 *respectively.

2.20 Tax Treatment on Payment for Rental of Ships

2.20.1 It is proposed that rental payments of ships under voyage charter, time charter or bare boat charter to a non-resident by a Malaysian resident company be exempted from income tax from 2 September 2006.

The Institutes welcome this proposal and wish to highlight that Public Ruling 4/2006 on Withholding Tax on Special Classes of Income needs to be revised.

***Answer*:**

The relevant* Public Ruling *will be amended.

2.20.2 The Institutes would also like to seek confirmation on the following:-

(a) the effective date of 2 September 2006 applies to amounts paid or credited to the non-resident from that date onwards.

(b) pending the gazette of the Order, can taxpayers rely on the Budget proposal and stop withholding tax on the payments to non-residents for the rental payments stated above.

(c) the definition of the word "ship" referred to in the Speech.

***Answer*:**

(a) According to the* Ministry of Finance, *the date of* 2 September 2006 *applies to the amount that is due and payable.

(b) Yes.

***(c) The* IRBM *responded that, as confirmed by the* Ministry of Finance, *"ship" refers to an ocean-going ship i.e. excluding barge, tug boat etc. The matter will be addressed in the* Order.**

2.21 Income Tax Exemption for Seafarers Working on Board a Foreign Ship

It has been proposed that the income of a seafarer who is employed by a Malaysian shipping company on board a foreign ship chartered by the employer be given tax exemption. Clause 32(e) of the Bill provides that income of an individual derived from exercising an employment on board a ship used in a business operated by a Malaysian resident person being a registered owner of a ship under the Merchant Shipping Ordinance 1952.

The Institutes wish to confirm that the income of a seafarer who is employed by a Malaysian shipping company on board a Malaysian ship OR on a foreign ship being used by the shipping company would be exempted from tax. As such, the foreign

ship need not be owned by the Malaysian shipping company. However, the Malaysian shipping company must have at least one Malaysian ship.

***Answer*:**

***Yes*.**

2.22 Definition of Investment Holding Company (IHC)

It has been proposed that an IHC be redefined as a company whose activities consist mainly of the holding of investments and not less than 80% of its gross income other than gross income from a source consisting of the business of holding of an investment (whether exempt or not) is derived therefrom. The "business of holding of an investment" means business of letting of property where a company in any year of assessment provides any maintenance or support services in respect of the property.

It now appears that taxpayers would need to firstly, determine whether their business of letting of property falls into the above definition of "business of holding of an investment". If it does, then that portion of income would be excluded in applying the 80%/20% rule. However, it is not clear whether that portion should be excluded from the gross income i.e. the denominator in determining whether the 80% threshold is exceeded.

For example, Company X is established for a sole purpose of carrying out the business of letting properties. The company is actively involved in renting out its properties and provides an ancillary or support services/facilities. In addition to the income from rental business, the company also derives dividend income.

	Scenario A	*Scenario* B
	RM	RM
Dividend	60	85
Rent	40	15

In determining the percentage of income from holding of investments, should it be 60/60 or 60/100 for Scenario A and should it be 85/85 or 85/100 for Scenario B?

The Institutes are of the view that such an approach would result in genuine business activities being treated as income of an IHC. The Institutes are puzzled as to why it is necessary to introduce such a complex provision in the Act and the rationale for this. The approach is an attempt to deny a company carrying on an actual business of letting of property (taxed under Section 4(a) of the Act) from being treated as carrying on a business.

***Answer*:**

T*he* IRBM *responded that the determination of the percentage of income from holding of investment is as follows*:

S*cenario* A - $\frac{60}{100} \times 100 = 60\%$ (*not an* IHC)

S*cenario* B - $\frac{85}{100} \times 100 = 85\%$ (*an* IHC)

N*ote*: F*or the purpose of determining whether the company is an* IHC, *an income from "business of holding of an investment" (i.e. business of letting of property) is not taken into consideration in calculating the percentage.*

***Where a company has been determined as an* IHC, *the rental income derived from the "business of holding of an investment" shall be treated as income of* IHC *under section* 60F *or* 60FA.**

2.23 Tax Treatment on Release of a Debt

It has been proposed under clause 10 of the Bill that where capital allowances under Schedule 3 of the Act had been made on expenditure, the whole or any part of a debt in respect of such expenditure so released in the relevant period will be treated as gross income of the period.

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

(a) the tax treatment where the qualifying capital expenditure on which capital allowances have been claimed is restricted (for example private motor vehicles costing above RM150,000 are restricted to a maximum of RM50,000). Under such instances, the amount of debt treated as gross income should only be limited to the amount of capital allowances claimed.

(b) capital allowances shall continue to be claimed on the same asset in the year of assessment in which the debts are waived as well as for subsequent years of assessment.

In addition, the Institutes would like to highlight that clause 10 should only apply to loans which are taken specifically to acquire assets on which capital allowances have been claimed. In practice, it would be difficult to identify loans which are taken for working capital purposes and also used to purchase assets.

***Answer*:**

(a) The* IRBM *confirmed that the gross income should be equivalent to the amount of the debt released.

(b) The* IRBM *confirmed that the capital allowance can continue to be claimed.

2.24 Gazette Orders

The Institutes would like to request the authorities to stipulate a time frame for the issuance of the relevant gazette orders for the following 2007 budget proposals:

- Tax treatment on payment for rental of ships
- Income tax exemption for Islamic banking and takaful business
- Tax exemption for companies managing foreign Islamic funds
- Deduction on expenses to establish Islamic stock broking companies
- Extension of tax incentive for issuance of Islamic securities
- Review of tax treatment on Special Purpose Vehicle for Islamic financing
- Incentive for banks to set up operations overseas
- Review of tax treatment for Venture Capital Companies
- Review of incentives for biotechnology industry
- Extending the incentive for promotion of Malaysian brand name
- Tax incentives for tour operators
- Extending the scope of incentive for the capital market graduate training scheme
- Extending the scope of a promoted area
- Exemption of stamp duty on Islamic Financial Instruments

***Answer*:**

The* IRBM *responded that the* IRBM *is in the midst of preparing the gazette* Orders*.

3.0 REAL PROPERTY GAINS TAX (RPGT)

3.1 Conditional Contracts

It has been proposed that where an acquisition or disposal requires the approval by the Government or an authority or committee appointed by the Government, the date of disposal shall be the date of such approval or where the approval is conditional, the date of disposal shall be the date when the last of such conditions is satisfied.

The Institutes wish to highlight the following issues:-

(a) a contract for disposal may be subject to several conditions which may not necessarily be related to obtaining approvals from the Government or relevant authority or committee. For such contracts, it is proposed that the date of disposal be the date when the last of the conditions is satisfied.

(b) in a situation where there is an equity condition imposed by the Foreign Investments Committee (FIC) which is required to be fulfilled within a period of say, 3 years, would the date of disposal be the date when the FIC condition is finally fulfilled? What happens if the period of 3 years is further extended?

***Answer*:**

(a) **W*hen a contract for disposal is subject to several conditions which may not be related to obtaining an approval from the* Government *or relevant authority/*Committee*, the date of disposal would be the date of the* Sales *and* Purchase *Agreement.***

(b) ***Yes, the date of disposal is the date when the last of the conditions imposed by the* FIC *is finally fulfilled.***

3.2 Transfer of Assets into Stock

It is proposed that a chargeable asset shall be deemed to be disposed of if an asset acquired or held by a person is taken into trading stock. The disposal price of the chargeable asset shall be equal to the market value at the date the asset is taken into stock.

The Institutes wish to highlight that the mere fact that an asset is transferred into trading stock should not be deemed to be a disposal of an asset. The facts of each case should be examined to determine whether or not there is in fact a disposal.

It is not unusual for a property development entity to hold large areas of land which are at varying stages of development, ranging from land on which there is no development to those which are in an advanced stage of development.

The reclassification of Land held for Property Development Account which is a current asset to stocks should not be construed as a deemed disposal. We seek confirmation that no RPGT will apply on this reclassification.

The Institutes wish to clarify the following:-

(a) whether a valuation report produced by a third party valuer would be sufficient to support the market value of the asset.

(b) whether the costs incurred (i.e. those referred to in paragraph 5 of Schedule 2 of the RPGT Act 1976) relating to the transfer of the asset to stocks including real property gains tax paid on the transfer would be deductible as these are legitimate costs incurred in transferring the land to be used for a trading activity.

***Answer*:**

(a) A valuation report by a third party valuer is acceptable unless the Director General believes that the valuation does not reflect the true value, in which case the government valuation is to be relied on and applied.

(b) RPGT is not an expense incurred in the production of income from a business. In case of property development, the issue will be discussed in the Regulations or the revised Public Ruling.

4.0 SUPPLEMENTARY ISSUES

4.1 Definition of Investment Holding Company (IHC)

It has been proposed that an IHC be redefined as a company whose activities consist mainly of the holding of investments and not less than 80% of its gross income other than gross income from a source consisting of the business of holding of an investment (whether exempt or not) is derived therefrom. The "business of holding of an investment" means business of letting of property where a company in any year of assessment provides any maintenance or support services in respect of the property.

The Institutes would like to clarify the basis used in determining whether any maintenance or support services are provided. For example, would a one-off repair of the property constitute the provision of maintenance services?

***Answer*:**

The* IRBM *clarified that the same test, as mentioned in the Public Ruling* 1/2004 *on letting of property applies.

4.2 Group Relief – Introduction of Appeal Procedure

It has been proposed that where the surrendering company is dissatisfied with the penalty imposed, it may within 30 days of being notified, appeal to the Special Commissioners of Income Tax.

The Institutes note that this proposal is effective from year of assessment 2007 whilst the group relief incentive is effective from year of assessment 2006. The Institutes wish to propose that the appeal procedure be effective from 1 September 2006 or earlier.

***Answer*:**

***The* IRBM *clarified that the above matter is a policy decision. Though the effective date is year of assessment* 2007, *the taxpayer can still appeal for year of assessment* 2006.**

5.0 ISSUES RELATING TO 2006 BUDGET

5.1 Scope of Individual Tax Relief for Further Education

Based on the Minutes of the Technical Dialogue with the IRB on 15 March 2006, Item 16 clarified that the cost incurred in acquiring professional accounting qualifications by way of self-study would be eligible for the relief. A list of the professional bodies approved in respect of this relief will be issued by the Ministry of Finance.

We wish to enquire on the status of the list.

***Answer*:**

***The* IRBM *will forward the enquiry on the status of the list to the Ministry of Finance* (MOF).**

5.2 Outstanding Guidelines

Based on the Minutes of the Technical Dialogue with the IRB on 15 March 2006, Items 2.7 and 12.2 clarified that the IRB will issue a detailed guideline on group relief and the treatment of bonds respectively as soon as possible.

We wish to enquire on the status of these guidelines.

***Answer*:**

The* IRBM *responded that it is in the midst of preparing a Public Ruling instead of a guideline.

6.0 ISSUES RELATING TO PREVIOUS BUDGET PROPOSALS

The Institutes would like to enquire on the status of the issuance of statutory orders (see Appendix A) for the previous budget proposals.

***Answer*:**

***As per Appendix* B.**

7.0 OTHER MATTERS

7.1 Secretarial and Tax Fees

The Income Tax (Deduction for Audit Expenditure) Rules 2006 has been gazetted to allow the deduction of statutory audit fees in ascertaining the adjusted income of a company in the basis period for a year of assessment.

Based on the Minutes of the previous Technical Dialogue held on 15 March 2006, the concession for the deduction of secretarial and tax fees would not be continued with effect from year of assessment 2006. The non-deductibility was also indicated in the Public Ruling 6/2006 on Tax Treatment of Legal and Professional Expenses.

The Institutes would like to know the rationale of discontinuing the concession whilst statutory audit fee which is of similar nature, be allowed a deduction. To promote fair treatment, the Institutes urge that the concession for the deduction of secretarial and tax fees be continued.

***Answer*:**

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

Appendix A

1.0 1999 Budget

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

2.0 2003 Budget

2.1 Qualifying capital expenditure incurred by a non-rubber plantation company in the preparation of land, planting and maintenance of rubberwood cultivation will be given Accelerated Agriculture Allowance. The write-off period for the relevant expenditure will be accelerated from two years to one year on condition that the company plants at least 10% of its plantation with rubberwood trees.

2.2 A company that invests in a wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land will be allowed a deduction equivalent to the amount of the investment, and the wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land will be exempted from service tax.

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

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

(ii) Expenditure incurred by a company for drafting the individual Corporate Knowledge-based Master Plan will be allowed as a deduction in the tax computation.

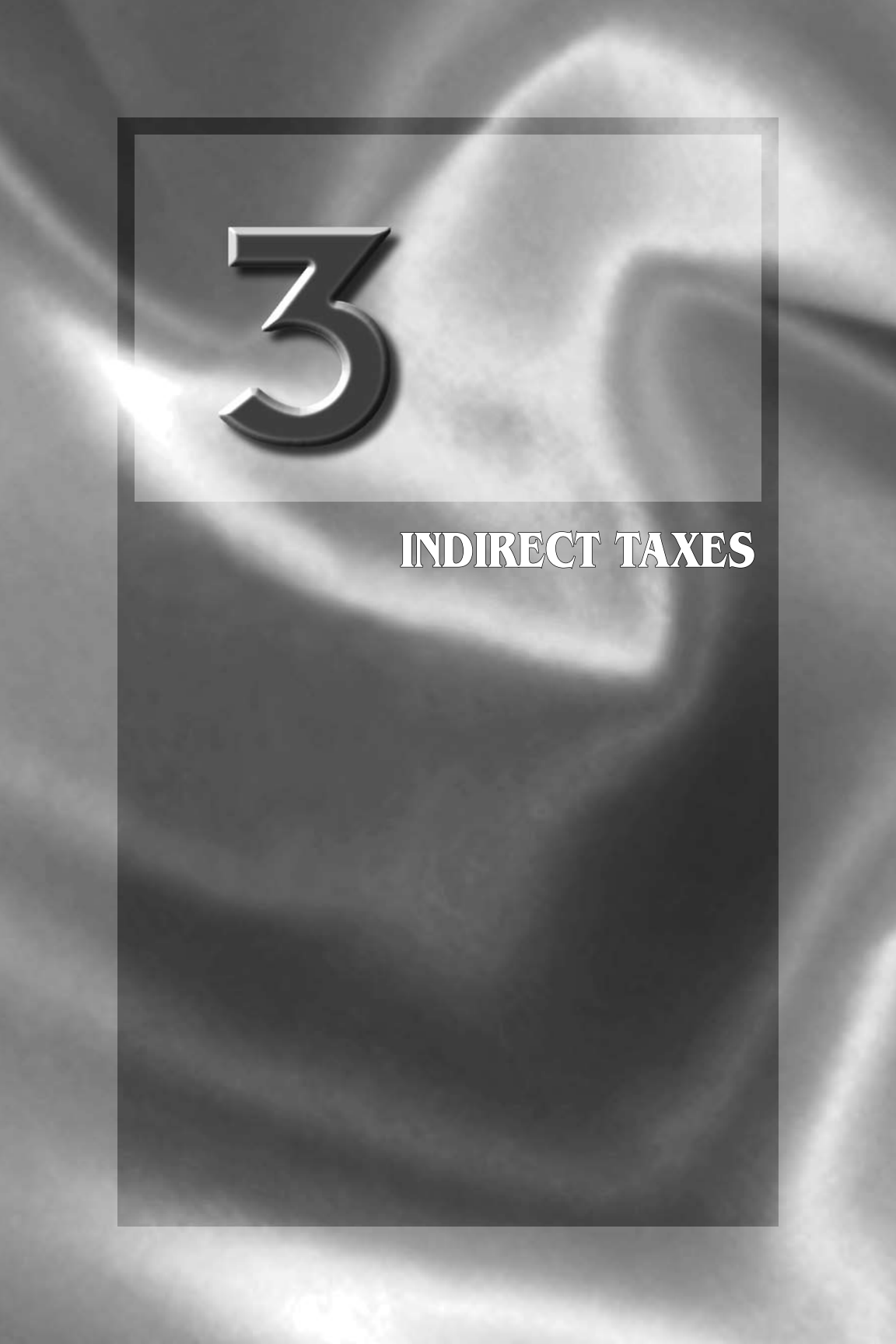
3.0 2003 Economic Stimulus Package

3.1 Group relief will be extended under a pre-packaged scheme to forest plantations, including rubber plantations, and to selected products in the manufacturing sectors such as biotechnology, nanotechnology, optics and photonics.

3.2 Hypermarkets and direct selling companies that export locally produced goods will be given income tax exemption on statutory income equivalent to 20% of their increased export value.

Appendix B

1999 Budget	Orders/Rules	Status
1	The Income Tax Exemption Order for the Income derived from repair and maintenance activities for luxury boats and yachts in Langkawi.	The exemption will be given under section 127(3A)
2003 Budget	**Orders/Rules**	**Status**
1	The Income Tax Rules for the accelerated agriculture allowance on qualifying capital expenditure incurred by a non-rubber plantation company in the preparation of land, planting and maintenance of rubberwood cultivation.	Under discussion (awaiting guidelines from the relevant Ministry - Kementerian Perusahaan Perladangan & Komoditi).
2	The Income Tax Rules for a company that invests in a wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land.	Under discussion (awaiting guidelines from the relevant Ministry - Kementerian Perusahaan Perladangan & Komoditi).
3	The Income Tax Rules for expenditure incurred by a company for drafting the Individual Corporate Knowledge-based Master Plan.	Under discussion (awaiting information from MOF)
2003 Economic Stimulus Package	**Orders/Rules**	**Status**
1	The Income Tax Exemption Order for group relief under a pre-packaged incentives i.e forest plantations and selected products in sectors such as biotechnology, nanotechnology, optics and photonics.	Provision of group relief under Schedule 4C has been deleted with effect from year assessment of 2006 The exemption order for biotechnology industry and forest plantations will be gazetted separately.
2	The Income Tax Exemption Order for the value of increased export of locally produced product exported by the hypermarkets and direct selling companies.	Under discussion (awaiting guidelines from the relevant Ministry - Kementerian Perdagangan Dalam Negeri & Hal Ehwal Pengguna).



3

INDIRECT TAXES

A Amendments to Customs Act 1967

I. CUSTOMS (AMENDMENT) ACT 2006

1.0 Amendment of section 2

Subsection 2(1) of the Customs Act 1967 [*Act* 235], which is referred to as the "principal Act' in this Act, is amended in the definition of "customs duty", by inserting after the words "Countervailing and Anti-Dumping Duties Act 1993 [*Act* 504]" the words ", any safeguard duty imposed by or under the Safeguards Act 2006 [*Act* 657]".

Effective date: To be notified.

Comments:

This amendment seeks to amend section 2(1) of the Customs Act 1967 to introduce the safeguard duty in the definition of 'customs duty".

2.0 Amendment of section 122C

Section 122C of the Customs Act is amended –

(a) in the shoulder note, by substituting for the words "and antidumping" the words ", anti-dumping and safeguard",

(b) by substituting for the words "or anti-dumping duty" the words ", anti-dumping duty or safeguard duty".

Effective date: To be notified

Comment:

Section 122C of the Customs Act are amended so that when it is necessary to prove the amount of safeguard duty, the production of a certificate signed by the Director General stating the amount of safeguard duty payable shall be sufficient for the court to give judgment for that amount.

3.0 Amendment of section 2

The Customs Act 1967 [*Act* 235], which is referred to as the "principal Act" in this Act, is amended in section 2 by inserting after the definition of "customs port" the following definition:

> "customs ruling" means the customs ruling made by the Director General under section 10B;".

Effective date: 1 April 2007

Comment:

This amendment of section 2 of the Customs Act seeks to introduce the definition of "customs ruling".

4.0 New Part IIA

The Customs Act is amended by inserting after section 10 the following Part:

"PART IIA

CUSTOMS RULING

Application for customs ruling

10A. (1) Any person may apply, in the prescribed form together with the prescribed fee, to the Director General for a customs ruling in respect of any one or more of the following matters:

(a) the classification of goods;

(b) the principles to be adopted for the purposes of determination of value of goods; or

(c) on any other matters to be prescribed by the Director General.

(2) An application under subsection (1) may be made –

(a) In respect of imported goods –

(i) at any time before the goods, that are the subject mater of the application, are to be imported or intended to be imported into Malaysia; or

(ii) at any later time, if the Director General may in his discretion permit; or

(b) In respect of manufactured goods –

(i) at any time before the goods that are the subject matter of the application, are to be manufactured; or

(ii) at any later time, if the Director General may in his discretion permit.

(3) An applicant may withdraw his application at any time before a customs ruling is made and any payment made

relating to the application for the customs ruling shall be forfeited by the director General.

Making of customs ruling

10B. (1) Subject to subsection (3), the Director General shall make a customs ruling in respect of any matter specified in the application made under section 10A and such ruling shall bind the applicant.

(2) Any such customs ruling may be subject to such conditions as the Director General may deem fit to impose.

(3) The Director General may decline to make a customs ruling if, in his opinion –

(a) the information given by the applicant is insufficient to do so;

(b) the application is for a hypothetical situation; or

(c) an appeal under this Act is pending involving the subject matter referred to in the application.

Amendment, modification or revocation of customs ruling

10C. (1) A customs ruling may be amended, modified or revoked by the director General if –

(a) it contains an error which needs to be corrected;

(b) the customs ruling was based on an error of fact or law;

(c) there is a change in law relating to customs; or

(d) there is a change in the material fact or circumstances on which the ruling was based.

(2) The Director General shall, immediately after making the amendment, modification or revocation, give a notice in writing to the applicant of the amendment, modification or revocation and, subject to subsection (3), such amended, modified or revoked customs ruling shall take effect from the date stated in the notice.

(3) Notwithstanding subsection (2), where a customs ruling has the effect of causing or increasing any duty liability in respect of any goods, and –

(a) the goods are imported within 3 months of the date the notice of the amendment, modification or

revocation is given, pursuant to a binding contract entered into before that date;

(b) that the goods have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to Malaysia on the date the notice of the amendment, modification or revocation of the ruling is given; or

(c) the goods are imported on or before the date the notice of the amendment, modification or revocation is given but have not been released for home consumption,

then the customs ruling which was made prior to the amendment, modification or revocation under this section shall be applied to such goods.

(4) Notwithstanding subsection (2), and subject to section 16, if the amendment, modification or revocation to a customs ruling has the effect of decreasing any duty liability in respect of any goods, any higher duty that has been paid shall been treated as if it has been paid in error.

Director General to declare rulings to be null, etc.

10D. The Director General shall by a notice declare a customs ruling made under section 10B to be null, void and of no effect if the ruling has been obtained by the applicant by way of fraud, misrepresentation or falsification of facts.

Receiving of two customs rulings

10E. Where an applicant receives two or more different customs ruling on the same subject matter, such rulings shall be treated as being null and void and such applicant shall immediately notify the Director General who shall, within thirty days from the date of the notification, issue a new customs ruling.".

Effective date: 1 April 2007

Comment:

A new Part IIA is introduced to The Customs Act 1967 to provide a proper customs ruling system. Currently the Royal Customs Department is issuing rulings at an ad hoc basis resulting in inconsistencies in implementation.

The new provision provides for an application for a customs ruling, the making of the ruling and its applicability. It allows the Director General to amend, modify or revoke a customs ruling. Under the provision the Director General is also empowered to declare a customs ruling to be null, void and of no effect if the ruling has been obtained by way of fraud, misinterpretation or falsification of facts. An applicant is not allowed to hold two or more different customs rulings on a same subject matter.

5.0 Amendment of section 22A

Section 22A of the principal Act is amended by inserting after the words "under section" the words "10B".

Effective date: 1 April 2007

Comment:

Section 22A is amended to include 10B, so that a certificate signed by the Director General shall be admissible in evidence and shall be accepted as sufficient evidence of facts by the court.

6.0 Amendment of section 135

Subsection 135(1) of the principal Act is amended -

(*a*) by substituting for subparagraph (i) the following subparagraph:

"(i) in the case of goods included in a class of goods appearing in an order made under subsection 11(1) –

(*aa*) be liable for the first offence to a fine of not less than ten times the amount of the customs duty and of not more than twenty times the amount of the customs duty, or to imprisonment for a term not exceeding three years or to both; and

(*bb*) be liable for a second offence or any subsequent offence to a fine of not less than twenty times the amount of the customs duty and of not more than forty times the amount of the customs duty, or imprisonment for a term not exceeding five years or to both;

Provided that when the amount of the customs duty cannot be ascertained, the penalty may amount to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both;"; and

(*b*) by substituting for subparagraph (iii) the following subparagraph:

"(iii) in the case of prohibited goods –

(*aa*) be liable for the first offence to a fine of not less than ten times the value of the goods and of not more than twenty times the value of the goods, or to imprisonment for a term not exceeding three years or to both; and

(*bb*) be liable for a second or any subsequent offence to a fine of not less than twenty times the value of the goods and of not more than forty times the value of the goods, or to imprisonment for a term not exceeding five years or to both:

Provided that where the value of the goods cannot be ascertained, the penalty may amount to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.".

Effective date: 1 April 2007

Comment:

The amendment seeks to specify the minimum fines that can be imposed for smuggling offences. The changes are intended to overcome the problem of smuggling of high duty goods particularly cars, cigarettes and liquor.

7.0 New Part XIV A

The principal Act is amended by inserting after section 141 the following Part:

"PART XIVA

CUSTOMS APPEAL TRIBUNAL

Interpretation

141A. In this Part, unless the context otherwise requires –

"Chairman" means the Chairman of the Tribunal appointed under paragraph 141C(1)(a);

"Deputy Chairman" means the Deputy Chairman of the Tribunal appointed under paragraph 141C(1)(a);

"Secretary" means the Secretary to the Tribunal appointed under section 141H;

"Tribunal" means the Customs Appeal Tribunal established under section 141B.

Establishment of Tribunal

141B. A tribunal to be known as " the Customs Appeal Tribunal" is established.

Membership of Tribunal

141C. (1) The Tribunal shall consist of the following members who shall be appointed by the Minister:

(*a*) a Chairman and a Deputy Chairman from amongst members of the Judicial and Legal Service; and

(*b*) not less than two other members being persons with special knowledge and experience in customs or taxation matters.

(2) The members referred to in paragraph (1)(*b*) –

(*a*) shall hold office for a term not exceeding three years; and

(*b*) shall be eligible for reappointment upon the expiry of his term of office but shall not be appointed for more than three consecutive terms.

Temporary exercise of functions of Chairman

141D. Where the Chairman is for any reason unable to perform his functions or during any period of vacancy in the office of the Chairman, the Deputy Chairman shall perform the functions of the Chairman.

Revocation of appointment

141E. The Minister may revoke the appointment of a member of the Tribunal appointed under paragraph 141C(1)(*b*) if –

(*a*) his conduct, whether in connection with his duties as a member of the Tribunal or otherwise, has been such as to bring discredit to the Tribunal;

(*b*) he has become incapable of properly carrying out his duties as a member of the Tribunal;

(*c*) there has been proved against him, or he has been convicted on, a charge in respect of –

(i) an offence involving fraud, dishonesty or moral turpitude;

(ii) an offence under a law relating to corruption;

(iii) an offence under this Act, the Excise Act 1976 [*Act* 176], the Sales Tax Act 1972 [*Act* 64] or the Services Tax Act 1975 [*Act* 151]; or

(iv) any other offence punishable with imprisonment for more than two years;

(*d*) he is adjudicated a bankrupt;

(*e*) he has been found or declared to be of unsound mind or has otherwise become incapable of managing his affairs; or

(*f*) he absents himself from three consecutive sittings of the Tribunal without leave of the Chairman.

Resignation

141F. A member of the Tribunal appointed under paragraph 141C(1)(*b*) may at any time resign his office by notice in writing to the Minister.

Remuneration

141G. All members of the Tribunal shall be paid such remuneration as the Minister may determine.

Secretary to Tribunal and other officers

141H. (1) There shall be appointed a Secretary to the Tribunal and such number of officers as may be necessary for carrying out the functions of the Tribunal.

(2) The Chairman shall have general control of the Secretary and officers of the Tribunal.

(3) The Secretary to the Tribunal shall be deemed to be an officer of the Tribunal.

Public servant

141I. All members, officers and the Secretary of the Tribunal while discharging their duties shall be deemed to be public servants within the meaning of the Penal Code [*Act* 574].

Sitting of Tribunal

141J. (1) The jurisdiction of the Tribunal shall be exercised by any of the following persons sitting alone:

(*a*) the chairman;

(*b*) the Deputy Chairman; or

(*c*) any member of the Tribunal determined by the Chairman.

(2) The Tribunal may sit in one or more sittings on such day and at such time and place as the Chairman may determine.

(3) If the person presiding over any proceedings in respect of an appeal dies or becomes incapacitated, or is for any other reason unable to complete or dispose of the proceedings, the appeal shall be heard afresh by another member of the Tribunal, unless the parties agree that the appeal be continued by another member of the Tribunal.

(4) Where the term of appointment of any member of the Tribunal expires during the pendency of any proceedings in respect of an appeal, the term of his appointment shall be deemed to be extended until the final disposal of the appeal.

Hearing by three members

141K. (1) Notwithstanding section 141J, where, upon an application made by the appellant to the Chairman before the commencement of an appeal the Chairman is satisfied that the issue in the proceedings –

(*a*) is of public interest; or

(*b*) has, as determined by the Minister, substantial revenue implication to the Government,

the Chairman may make an order that the appeal shall be heard and disposed of by a panel of three members of the Tribunal.

(2) The Chairman shall appoint a member of the panel to preside the proceedings.

(3) The decision of the panel shall be taken by the majority of members composing the panel.

(4) Where a member of the panel under subsection (1) dies or becomes incapable of exercising his functions as a member, the proceedings shall continue before, and decision shall be given by, the remaining members of the panel, not being less than two, and the panel shall, for the purposes of the proceedings, be deemed to be duly

constituted notwithstanding the death or incapability of the member as aforesaid.

(5) In any such case as is mentioned in subsection (4), the decision shall be taken by the majority of the remaining members of the panel, and if there is no majority decision, by the member presiding the proceedings.

(6) Where the term of appointment of any member of the panel expires during the pendency of any proceedings in respect of an appeal, the term of his appointment shall be deemed to be extended until the final disposal of the appeal.

Disclosure of interest

141L. (1) A member of the Tribunal having, directly or indirectly, by himself or his family member, any interest in an appeal brought before him as a member, such member shall, immediately, disclose the fact and the nature of his interest to the Chairman.

(2) Upon receipt of the disclosure of interest under subsection (1), the Chairman shall appoint another member to hear and dispose of the appeal.

Jurisdiction of Tribunal

141M.(1) The Tribunal shall have jurisdiction to determine any appeal made under section 143 of the Act, section 47 of the Excise Act 1976, subsection 68(2) of the Sales Tax Act 1972 and subsection 50(2) of the Service Tax Act 1975.

(2) Without affecting subsection (1), the Minister may by order prescribe any additional matters to be within the jurisdiction of the Tribunal.

(3) An appellant may lodge with the Tribunal an appeal in the prescribed form together with the prescribed fee.

Exclusion of jurisdiction of court

141N. (1) Where an appeal is lodged with the Tribunal and the appeal is within the jurisdiction of the Tribunal, the issues in dispute in such appeal, whether as shown in the initial appeal or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties in any court unless –

(*a*) the proceedings before the court were commenced before the appeal was lodged with the Tribunal; or

(*b*) the appeal before the Tribunal is withdrawn, abandoned or struck out.

(2) Where paragraph (1)(*a*) applies, the issues in dispute in the appeal to which those proceedings relate, whether as shown in the initial appeal or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties before the Tribunal unless the appeal before the court is withdrawn, abandoned or struck out.

Notice of appeal and hearing

141O. Upon an appeal being lodged under section 141M, the Sectary shall give notice of the details of the day, time and place of hearing in the prescribed form to the Director General and the appellant.

Negotiation for settlement

141P. (1) The Tribunal shall, as regards every appeal within its jurisdiction, assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to the proceedings to negotiate an agreed settlement in relation to the appeal.

(2) Without limiting the generality of subsection (1), in making an assessment the Tribunal shall have regard to any factor that in the opinion of the Tribunal, are likely to impair the ability of either or both of the parties to negotiate an agreed settlement.

(3) Where the parties reach an agreed settlement, the Tribunal shall approve and record the settlement and the settlement shall then take effect as if it were a decision of the Tribunal.

(4) Where –

(*a*) it appears to the Tribunal that it would not be appropriate for it to assist the parties to negotiate an agreed settlement in relation to the appeal; or

(*b*) the parties are unable to reach an agreed settlement in relation to the appeal,

the Tribunal shall proceed to determine the appeal.

No advocate and solicitor at hearing

141Q. (1) An advocate and solicitor shall not be allowed to represent an appellant at the hearing of an appeal before the Tribunal.

(2) Notwithstanding subsection (1) and section 37 of the Legal Profession Act 1976 [*Act* 166] -

(*a*) a corporation or an unincorporated body of persons may be represented by a full-time paid employee of the corporation or body; or

(*b*) a minor or any person under a disability may be represented by his next friend or guardian *ad litem*.

Proceedings to be closed

141R. Unless agreed by the parties to the appeal, all proceedings before the Tribunal shall be closed from the public.

Evidence

141S. (1) Any proceeding before the Tribunal shall be conducted without regard to formality and technicality and the Tribunal may –

(*a*) procure and receive all such evidence on oath or affirmation, whether written or oral, and examine all such persons as witnesses as the Tribunal thinks necessary to procure, receive or examine;

(*b*) require the production before it of books, papers, documents, records and things;

(*c*) administer such oath, affirmation or statutory declaration as the case may be;

(*d*) seek and receive such other evidence and make such other inquiries as it thinks fit;

(*e*) summon the parties to the proceedings or any other person to attend before it to give evidence or to produce any document, records or other thing in his possession or otherwise to assist the Tribunal in its deliberations;

(*f*) receive expert evidence; and

(*g*) generally direct and do all such things as may be necessary or expedient for the expeditious determination of the appeal.

(2) A summons issued under this section shall be served and enforced as if it were a summons issued by a subordinate court.

Decision of the Tribunal

141T. The Tribunal shall make its decision without delay and where practicable, within sixty days from the first day the hearing before the Tribunal commences.

(2) The Tribunal shall have the power –

(*a*) to affirm the decision of the Director General;

(*b*) to vary the decision of the Director General; or

(*c*) to set aside the decision of the Director General and substitute it with a new decision.

(3) The Tribunal shall give its reason for its decision in any appeal heard before it.

Decision and settlement to be recorded in writing

141U. The Tribunal shall make or cause to be made a written record of the terms of –

(*a*) every agreed settlement reached by the parties under subsection 141P(3); and

(*b*) every decision made by it under section 141T.

Decision of Tribunal to be final

141V. (1) A decision of the Tribunal shall be –

(*a*) final and binding on all parties to the proceedings; and

(*b*) deemed to be an order of a Sessions Court and be enforced accordingly by the parties to the proceedings.

(2) for the purpose of subsection (1)(*b*), the Secretary shall send a copy of the decision made by the Tribunal to the Sessions Court having jurisdiction in the place to which the decision relates or in the place where the decision was made and the Court shall cause the copy to be recorded.

Appeal to the High Court

141W. Any person aggrieved by the decision of the Tribunal may appeal to the High Court on a question of law or of mixed law and fact.

Tribunal to adopt procedure

141X. Subject to this Act, the Tribunal may adopt such procedure as it thinks fit and proper.

Want of form

141Y. No proceedings, decision or document of the Tribunal shall be set aside or quashed for want of form.

Disposal of documents, etc.

141Z. (1) The Tribunal may, at the conclusion of the proceedings before it, order that any document, record, material, thing, goods or other property produced during the proceedings be delivered to the rightful owner or be disposed of in such manner as it thinks fit.

(2) Where no person has taken delivery of the document, record, material, things, goods or other property referred to in subsection (1) after a period of six months, the ownership in the document, record, material, thing, goods or other property shall be deemed to have passed to and become vested in the Government.

Act or omission done in good faith

141AA. No action or suit shall be instituted or maintained in any court against –

(*a*) the Tribunal;

(*b*) a member of the Tribunal; or

(*c*) Any person authorized to act for or on behalf of the Tribunal,

for any act or omission done in good faith in the performance of its or his functions and the exercise of its or his powers under this Act.

Regulations in respect of the Tribunal

141AB.(1) The Minister may make such regulations as may be necessary or expedient in respect of the Tribunal.

(2) Without prejudice to the generality of subsection (1), regulations may be made for –

(*a*) prescribing the responsibilities of members of the Tribunal;

(*b*) prescribing the procedure of the Tribunal;

(*c*) prescribing the forms to he used in the proceedings under this Part;

(*d*) prescribing and imposing fees and providing the manner for collecting and disbursing such fees;

(e) prescribing anything required to be prescribed under this Part.".

Effective date: To be notified

Comment:

The amendment seeks to introduce a new Part XIVA into Customs Act to provide for the establishment of the Customs Appeal Tribunal (Tribunal) and appointment of its members. It also provides for the jurisdiction, sitting and powers of the Tribunal.

The Tribunal is an independent party set up to hear disputes pertaining to technical and administration decisions made by the Director General of Customs. The decision of the Tribunal shall be final and binding on all parties and deemed to be an order of a sessions Court and be enforced accordingly. Any person aggrieved by the decision of the Tribunal may appeal to the High Court.

8.0 Amendment to section 142

Section 142 of the principal Act is amended by inserting after paragraph (35B) the following paragraphs:

"(35C) to regulate the conduct of all matters relating to customs rulings;

(35D) to prescribe and impose fees relating to customs rulings and provide the manner for collecting and disbursing such fees;

(35E) to prescribe the forms to be used for the purpose of customs rulings;"

Effective date: 1 April 2007

Comment:

The amendments seek to empower the Minister to make regulations in respect of customs rulings, to prescribe the forms to be use and imposed fees relating to customs ruling.

9.0 Amendment to section 143

The principal Act is amended by substituting for section 143 the following section:

"Appeal from decision of Director General

143. Any person aggrieved by the decision of the Director General may, except in any mater relating to compound or subsection 128(3), within thirty days from the date of the notification in writing of the decision to him, appeal to the Tribunal, and the decision of the Tribunal shall be final."

Effective date: To be notified

Comment:

The amendment of section 142 is to enable for any person aggrieved by the decision of the Director General, other than decisions relating to compound, to appeal to the Tribunal within thirty days from the date of the notification in writing.

10.0 Deletion of section 143A

The principal Act is amended by deleting section 143A.

Effective date: To be notified

Comment:

The amendment is consequential to amendment of section 143.

B Amendments to Service Tax Act 1975

I. SERVICE TAX (AMENDMENT) ACT

1.0 Amendment of section 21B

The Service Tax Act 1975 is amended in section 21B –

(a) in the shoulder note, by inserting after the word "for" the words "doubtful debt or";

(b) in paragraph (1)(*b*), by inserting after the words "such Person" the words "has been provided in his accounts as doubtful debt or" ; and

(c) by substituting for subsection (4) the following subsection –

"(4) For the purpose of this section –

"bad debt" means the outstanding amount of the payment in respect of the provision of taxable services including the service tax which is due to the person but has not been paid to, and is irrecoverable by the person;

"doubtful debt" means a provision made with respect to the outstanding amount in the person's accounts consistent with the generally accepted accounting principles."

Effective date: 1 January 2007

Comment:

This amendment allows a taxable person to claim refund of service tax paid on outstanding debts which have been provided as doubtful debts in the taxable person's accounts. By extending the provision to include such amount provided as doubtful debt, it enable a taxable person to obtain faster refund on the amount of service tax unable to be recovered by him from his client. Before the amendment, only service tax on bad debts that are subsequently written off is allowed to claim refund.

II. SERVICE TAX (AMENDMENT) ACT 2007

2.0 Amendment of section 2

The Service Tax Act 1975 [*Act* 151], which is referred to as the "principal Act" in this Act, is amended in section 2, by inserting after the definition of "customs" the following definitions:

(a) "Customs Appeal Tribunal" means the Customs Appeal Tribunal established under section 141B of the Customs Act 1967 [*Act* 235];

Effective date: To be notified

The amendment seeks to define the term Customs Appeal Tribunal as define in the Customs Act 1967.

(b) "customs ruling" means the customs ruling made by the Director General under section 6B;

Effective date: 1 April 2007

Comment:

This amendment seeks to introduce the definition of the term *Customs Ruling* into the Service Tax Act 1975.

3.0 New Part IIA

The Service Tax Act 1975 is amended by inserting after section 6 the new Part IIA : -

"PART IIA

CUSTOMS RULING

Application for customs ruling

6A. (1) Any person may apply, in the prescribed form together with the prescribed fee, to the Director General for a customs ruling in respect of any one or more of the following matters:

(*a*) the determination of a taxable service;

(*b*) the principles to be adopted for the purposes of determination of value of a service; or

(*c*) any other matters to be prescribed by the Director General.

(2) An application under subsection (1) may be made at any time before a service is provided or at any later time, if the Director General may in his discretion permit.

(3) An applicant may withdraw his application at any time before a customs ruling is made and any payment made relating to the application for the customs ruling shall be forfeited by the Director General.

Making of customs ruling

6B. (1) Subject to subsection (3), the Director General shall make a customs ruling in respect of any matter specified in the application made under section 6A and such ruling shall bind the applicant,

(2) Any such customs ruling may be subject to such conditions as the Director General may deem fit to impose.

(3) The director General may decline to make a customs ruling if, in his opinion –

(*a*) the information given by the applicant is insufficient to do so;

(*b*) the application is for a hypothetical situation; or

(*c*) an appeal under this Act is pending involving the subject matter referred to in the application.

Amendment, modification or revocation of customs ruling

6C. (1) A customs ruling may be amended, modified or revoked by the Director General if –

(*a*) it contains an error which needs to be corrected;

(*b*) the customs ruling was based on an error of fact or law;

(*c*) there is a change in law relating to service tax; or

(*d*) there is a change in the material fact or circumstances on which the ruling was based.

(2) The Director General shall, immediately after making the amendment, modification or revocation, give a notice in writing to the applicant of the amendment, modification or revocation and, subject to subsection (3), such amended, modified or revoked customs ruling shall take effect from the date stated in the notice.

(3) Notwithstanding subsection (2), where a customs ruling has the effect of causing or increasing any tax liability in respect of any service provided within three months of

the date the notice of the amendment, modification or revocation is given pursuant to a binding contract entered into before that date, then the customs ruling which was made prior to the amendment, modification or revocation under this section shall be applicable to such service.

(4) Notwithstanding subsection (2), and subject to section 21, if the amendment, modification or revocation to a customs ruling has the effect of decreasing any tax liability in respect of any service, any higher tax that has been paid shall be treated as if it has been paid in error.

Director General to declare rulings to be null, etc

6D. The Director General shall by a notice declare a customs ruling issued under section 6B to be null, void and of no effect if the ruling has been obtained by the applicant by ways of fraud, misrepresentation or falsification of facts.

Receiving of two customs rulings

6E. Where an applicant receives two or more different customs rulings on the same subject matter, such rulings shall be treated as being null and void and such applicant shall immediately notify the Director General who shall, within thirty days from the date of the notification, issue a new customs ruling.

Effective date: 1 April 2007

Comment:

The new Part IIA seeks to introduce a proper customs ruling system that provides for an application for a customs ruling, making of the ruling and its applicability. The provision allow the Director General to amend, modify or revoke a customs ruling to be null, void and of no effect if the ruling has been obtained by way of fraud, misinterpretation or falsification of facts. An applicant is not allowed to hold two or more different customs rulings on a same subject matter.

Before the introduction of the Customs Ruling under the Act, there is no clear legal framework for obtaining rulings from Customs on taxable services. Currently, rulings on taxability of services under the Service Tax Act are issued by Customs on an ad hoc basis which caused inconsistencies in implementation.

4.0 New section 7B

The principal Act is amended by inserting after section 7A the following section:

"Certificate under section 6B to be admissible

7B. Notwithstanding anything contained in any other written law or rule of evidence to the contrary, where in any proceedings a document purporting to be a certificate under the hand of the Director General in respect of a decision made by him under section 6B is produced, such document shall be admissible in evidence and shall be accepted as sufficient evidence of the facts therein stated and the Director General shall not be required to give evidence in respect of such decision unless the court otherwise orders."

Effective date: 1 April 2007

Comment:

The new section 7B is introduced to make a certificate signed by the Director General of Customs in relation to a customs ruling shall be admissible in evidence and shall be accepted as sufficient evidence by the court.

5.0 Amendment to section 41

Section 41 of the principal Act is amended by inserting after paragraph (*cd*) the following paragraphs:

"(*ce*) the conduct of all matters relating to customs rulings;

(*cf*) the fees relating to customs rulings and the manner for collecting and disbursing such fees;

(*cg*) the forms to be used for the purpose of customs rulings;"

Effective date: 1 April 2007

Comment:

The amendments to section 41 are to empower the Minister of Finance to make regulations in respect to customs rulings.

6.0 Amendment of section 50

Section 50 of the principal Act is amended –

(a) by substituting for subsection (2) the following subsection:

"(2) Any person aggrieved by a decision of the Director General may, except in any matter relating to compound, within thirty days of being notified of such decision in writing, appeal to the Customs Appeal Tribunal whose decision shall be final."

(b) by inserting after subsection (2) the following subsection:

"(3) All provisions relating to the Customs Appeal Tribunal shall be applicable to this Act."

Effective date: To be notified

Comment:

The amendments of section 50 of the Service Tax Act enable any person aggrieved by the decision of the Director General, other than decisions relating to compound, within thirty days to appeal to the Tribunal.

III. SERVICE TAX (AMENDMENT) REGULATIONS 2006

7.0 Amendment of Regulation 16A

Regulation 16A are amended :

(a) in subparagraph 1(*a*)(vi), by substituting for the word "twelve" the word "six";

(b) in paragraph 1(*b*), by inserting after the words "taxable service has been" the words "provided for in the person's account as doubtful debt or"; and

(c) by substituting for sub regulation (4) the following sub regulation:

"(4) The Director General may disallow any refund –

(*a*) where the records or documents presented are untrue or incorrect; or

(*b*) on any other reasons for the purpose of the protection of revenue."

Effective date: 1 January 2007

Comment:

This amendment is in line with the amendment of section 21B of the Service Tax Act. Effective from 1 January 2007, a taxable person could claim service tax refund on bad debts or doubtful debts after six months from the date such service tax was paid. Before the amendment such claim could only be made after

twelve months after the service tax payment. The new subsection (4) of regulation 16A empower the Director General to reject any refund if the records or documents presented for the claim are untrue or incorrect.

IV. SERVICE TAX (AMENDMENT) REGULATIONS 2007

8.0 Amendment of Second Schedule

The Service Tax Regulations 1975 [P.U. (A) 52/1975] are amended in the Second Schedule, in Group G, in Subheading III –

(a) under the heading for "Taxable Person" by deleting item 1; and

(b) under the heading for "Taxable Service" by deleting item p.

Effective date: 5 September 2006

Comment:

The amendment seeks to exclude veterinary services from being a taxable service under the Service Tax Regulations 1975. This means any persons who operates a private veterinary clinic would no longer comes under the ambit of Service Tax Act.

C Amendments to Sales Tax Act 1972

I. SALES TAX (AMENDMENT) ACT

1.0 Amendment of section 31C

The Sales Tax Act 1972 is amended in section 31C –

(a) in the shoulder note, by inserting after the word "for" the words "doubtful debt or";

(b) in paragraph (1)(*b*), by inserting after the words "such person" the words "has been provided in his accounts as doubtful debt or"; and

(c) by substituting for subsection (4) the following subsection:

(4) For the purpose of this section –

"bad debt" means the outstanding amount of the payment in respect of the sale of taxable goods including the sales tax which is due to the person but has not been paid to, and is irrecoverable by the person;

"doubtful debt" means a provision made with respect to the outstanding amount in the person's accounts consistent with the generally accepted accounting principles.

Effective date: 1 January 2007

Comment:

The amendment allows a taxable person to claim refund of sales tax paid on outstanding debts which have been provided as doubtful debts in the taxable person's accounts. By extending the provision to include such amount provided as doubtful debt, it enable a taxable person to obtain faster refund on the amount of sales tax unable to be recovered by him from his client. Before the amendment, only sales tax on bad debts that are subsequently written off is allowed to claim refund.

II. SALES TAX (AMENDMENT) ACT 2007

2.0 Amendment of section 2

The Sales Tax Act 1972 [*Act* 64], which is referred to as the "principal Act" in this Act, is amended in section 2 –

(a) by inserting after the definition of "Customs" the following definition:

"Customs Appeal Tribunal" means the Customs Appeal Tribunal established under section 141B of the Customs Act 1967 [*Act* 235].

Effective date: To be notified

Comment:

The amendment seeks to amend section 2 of the Sales Tax Act 1972 to introduce the definition of "Customs Appeal Tribunal" into that section.

(b) by inserting after the definition of "customs control" the following definition:

"customs ruling" means the customs ruling made by the Director General under section 11B;

Effective date: 1 January 2007

Comment:

This amendment seeks to introduce the definition of the term *Customs Ruling* into section 2 of the Sales Tax Act 1972.

3.0 New Part IVA

The principal Act is amended by inserting after section 11 the following Part:

"PART IVA

CUSTOMS RULING

Application for customs ruling

11A. (1) Any person may apply, in the prescribed form together with the prescribed fee, to the Director General for a customs ruling in respect of any one or more of the following matters:

(*a*) the classification of goods;

(*b*) the determination of a taxable person;

(*c*) the principles to be adopted for the purposes of determination of value of goods; or

(*d*) any other matters to be prescribed by the Director General.

(2) An application under subsection (1) may be made –

(*a*) in respect of imported goods –

(i) at any time before the goods, that are the subject matter of the application, are to be imported or intended to be imported into Malaysia; or

(ii) at any later time, if the Director General may in his discretion permit; or

(*b*) in respect of manufactured goods –

(i) at any time before the goods, that are the subject matter of the application, are to be manufactured; or

(ii) at any later time, if the Director General may in his discretion permit.

(3) An applicant may withdraw his application at any time before a customs ruling is made and any payment made relating to the application for the customs ruling shall be forfeited by the Director General.

Making of customs ruling

11B. (1) Subject to subsection (3), the Director General shall make a customs ruling in respect of any matter specified in the application made under section 11A and such ruling shall bind the applicant.

(2) Any such customs ruling may be subject to such conditions as the Director General may deem fit to impose.

(3) The Director General may decline to make a customs ruling if, in his opinion –

(*a*) the information given by the applicant is insufficient to do so;

(*b*) the application is for a hypothetical situation; or

(*c*) an appeal under this Act is pending involving the subject matter referred to in the application.

Amendment, modification or revocation of customs ruling

11C. (1) A customs ruling may be amended, modified or revoked by the Director General if –

(*a*) it contains an error which needs to be corrected;

(*b*) the customs ruling was based on an error of fact or law;

(*c*) there is a change in law relating to sales tax; or

(*d*) there is a change in the material fact or circumstances on which the ruling was based.

(2) The Director General shall, immediately after making the amendment, modification or revocation, give a notice in writing to the applicant of the amendment, modification or revocation and, subject to subsection (3), such amended, modified or revoked customs ruling shall take effect from the date stated in the notice.

(3) Notwithstanding subsection (2), where a customs ruling has the effect of causing or increasing any tax liability in respect of any goods, and –

(*a*) the goods are imported within three months of the date the notice of the amendment, modification or revocation is given pursuant to a binding contract entered into before that date;

(*b*) the goods have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to Malaysia on the date the notice of the amendment, modification or revocation of the ruling is given; or

(*c*) the goods are imported on or before the date the notice of the amendment, modification or revocation is given but have not been released for the home consumption,

then the customs ruling which was made prior to amendment, modification or revocation under this section shall be applied to such goods.

(4) Notwithstanding subsection (2), and subject to section 32, if the amendment, modification or revocation to a customs ruling has the effect of decreasing any tax liability in respect of any goods, any higher tax that has been paid shall been treated as if the higher tax paid in error.

Director General to declare rulings to be null, etc.

11D. The Director General shall by a notice declare a customs ruling made under section 11B to be null, void and of no effect if the ruling has been obtained by the applicant by way of fraud, misrepresentation or falsification of facts.

Receiving of two customs rulings

11E. Where an applicant receives two or more different customs rulings on the same subject matter, such rulings shall be treated as being null and void and such applicant shall immediately notify the Director General who shall, within thirty days from the date of notification, issue a new customs ruling.".

Effective date: 1 April 2007

Comment:

The amendment seeks to introduce a new Part IVA into the Sales Tax Act 1972 that provides for a proper application of a customs ruling, making of the ruling and its applicability. The provision allows the Director General to amend, modify or revoke a customs ruling to be null, void and of no effect if the ruling has been obtained by way of fraud, misinterpretation or falsification of facts. An applicant is not allowed to hold two or more different customs rulings on a same subject matter.

Before the introduction of the Customs Ruling, there is no clear legal framework for obtaining rulings from Customs on taxable goods, determination of a taxable person, determination of value under the Sales Tax Act. Currently, rulings on taxable goods or taxable person under the Tax Act are issued by Customs on an ad hoc basis which caused inconsistencies in implementation.

4.0 New section 12B

The principal Act is amended by inserting after section 12A the following section:

"Certificate under section 11B to be admissible

12B. Notwithstanding anything contained in any other written law or rule of evidence to the contrary, where in any proceedings a document purporting to be a certificate under the hand of the Director General in respect of a decision made by him under section 11B is produced, such document shall be admissible in evidence and shall be accepted as sufficient evidence of the facts therein stated and the Director General shall not be required to give evidence in respect of such decision unless the court otherwise orders."

Effective date: 1 April 2007

Comment:

The new section 11B is introduced to enable a certificate signed by the Director General of Customs in relation to a customs ruling shall be admissible in evidence and shall be accepted as sufficient evidence by the court.

5.0 Amendment of section 61

Section 61 of the principal Act is amended by inserting after paragraph (*db*) the following paragraphs:

"(*dc*) the conduct of all matters relating to customs rulings;

(*dd*) the fees relating to customs rulings and the manner for collecting and disbursing such fees;

(*de*) the forms to be used for the purpose of customs rulings;"

Effective date: 1 April 2007

Comment:

The amendment to section 61 seeks to empower the Minister to make regulations in respect of customs ruling.

6.0 Amendment of section 68

Section 68 of the principal Act is amended –

(a) by substituting for subsection (2) the following subsection:

"(2) Any person aggrieved by a decision of the Director General may, except in any matter relating to compound or subsection 55(3), within thirty days of being notified of such decision in writing, appeal to the Customs Appeal Tribunal whose decision shall be final."; and

(b) by inserting after subsection (2) the following subsection:

"(3) All provisions relating to the Customs Appeal Tribunal shall be applicable to this Act.".

Effective date: To be notified

Comment:

The amendments of section 68 of the Sales Tax Act enable any person aggrieved by the decision of the Director General, other than decisions relating to compound, within thirty days to appeal to the Tribunal.

III. SALES TAX (AMENDMENT) REGULATION 2006

6.0 Amendment of regulation 19D

The Sales Tax Regulations 1972 [P.U. (A) 55/1972] which in these Regulations are referred to as the "principal Regulations", are amended in regulation 19D –

(*a*) in subparagraph 1(*a*)(vi), by substituting for the word "twelve" the word "six";

(*b*) in paragraph 1(*b*), by inserting after the words "taxable goods has been" the words "provided for in the person's account as doubtful debt or"; and

(*c*) by substituting for sub regulation (4) the following sub regulation;

"(4) The Director General may disallow any refund –

(*a*) where the records or documents presented are untrue or incorrect; or

(*b*) on any other reasons for the purpose of the protection of revenue."

Effective date: 1 January 2007

Comment:

This amendment is in line with the amendment of section 31C of the Sales Tax Act 1972. Effective from 1 January 2007, a taxable person could claim sales tax refund on bad debts or doubtful debts after six months from the date such sales tax was paid. Before the amendment such claim could only be made twelve months after the payment of the service tax. The new sub regulation (4) of regulation 19D empower the Director General to reject any refund if the records or documents presented are untrue or incorrect.

D Amendments to Excise Act 1976

I. EXCISE (AMENDMENT) ACT 2007

1.0 Amendment of section 2

The Excise Act 1976 [*Act* 176], which is referred to as the 'principal Act" in this Act, is amended in section 2 –

(*a*) by inserting after the definition of "customs airport" the following definition:

"Customs Appeal Tribunal" means the Customs Appeal Tribunal established under section 141B of the Customs Act 1967 [*Act* 235].

Effective date: To be notified

Comment:

The amendment seeks to amend section 2 of the Excise Act 1976 to introduce the definition of "Customs Appeal Tribunal" into that section.

(*b*) by inserting after the definition of "customs port" the following definition:

"customs ruling" means the customs ruling made by the Director General under section 5B;

Effective date: 1 April 2007

Comment:

The amendment seeks to introduce the definition of "customs ruling" into section 2 of the Excise Act 1976.

2.0 New Part IIA

The principal Act is amended by inserting after section 5 the following Part:

"PART IIA

CUSTOMS RULING

Application for customs ruling

5A. (1) Any person may apply, in the prescribed form together with the prescribed fee, to the Director General for a

customs ruling in respect of any one or more of the following matters:

(*a*) the classification of goods;

(*b*) the principles to be adopted for the purposes of determination of value of goods; or

(*c*) any other matters to be prescribed by the Director General.

(2) An application under subsection (1) may be made –

(*a*) in respect of imported goods –

(i) at any time before the goods, that are the subject matter of the application, are to be imported or intended to be imported into Malaysia; or

(ii) at any later time, if the Director General may in his discretion permit; or

(*c*) in respect of manufactured goods –

(i) at any time before the goods that are the subject matter of the application, are to be manufactured; or

(ii) at any later time, if the Director General may in his discretion permit.

(3) An applicant may withdraw his application at any time before a customs ruling is made and any payment made relating to the application for the customs ruling shall be forfeited by the Director General.

Making of customs ruling

5B. (1) Subject to subsection (3), the Director General shall make a customs ruling in respect of any matter specified in the application made under section 5A and such ruling shall bind the applicant.

(2) Any such customs ruling may be subject to such conditions as the Director General may deem fit to impose.

(3) The Director General may decline to make a customs ruling if, in his opinion –

(*a*) the information given by the applicant is insufficient to do so;

(*b*) the application is for a hypothetical situation; or

(*c*) an appeal under this Act is pending involving the subject matter referred to in the application.

Amendment, modification or revocation of customs ruling

5C. (1) A customs ruling may be amended, modified or revoked by the Director General if –

(*a*) it contains an error which needs to be corrected;

(*b*) the customs ruling was based on an error of fact or law;

(*c*) there is a change in law relating to excise; or

(*d*) there is a change in the material fact or circumstances on which the ruling was based.

(2) The Director General shall, immediately after making the amendment, modification or revocation, give a notice in writing to the applicant of the amendment, modification or revocation and, subject to subsection (3), such amended, modified or revoked customs ruling shall take effect from the date stated in the notice.

(3) Notwithstanding subsection (2), where a customs ruling has the effect of causing or increasing any duty liability in respect of any goods, and –

(*a*) the goods are imported within three months of the date the notice of the amendment, modification or revocation is given pursuant to a binding contract entered into before that date;

(*b*) the goods have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to Malaysia on the date the notice of the amendment, modification or revocation of the ruling is given; or

(*c*) the goods are imported on or before the date the notice of the amendment, modification or revocation is given but have not been released for the home consumption,

then the customs ruling which was made prior to the amendment, modification or revocation under this section shall be applied to such goods.

(5) Notwithstanding subsection (2), and subject to section 13, if the amendment, modification or revocation to a customs ruling has the effect of decreasing any duty liability in respect of any goods, any higher duty that has been paid shall been treated as if the higher duty paid in error.

Director General to declare rulings to be null, etc.

5D. The Director General shall by a notice declare a customs ruling made under section 5B to be null, void and of no effect if the ruling has been obtained by the applicant by way of fraud, misrepresentation or falsification of facts.

Receiving of two customs rulings

5E. Where an applicant receives two or more different customs rulings on the same subject matter, such rulings shall be treated as being null and void and such applicant shall immediately notify the Director General who shall, within thirty days from the date of the notification, issue a new customs ruling."

Effective date: 1 April 2007

Comment:

The amendment seeks to introduce a new Part IIA into the Excise Act 1967 that provides for a proper application of a customs ruling, making of the ruling and its applicability. The provision allows the Director General to amend, modify or revoke a customs ruling to be null, void and of no effect if the ruling has been obtained by way of fraud, misinterpretation or falsification of facts. An applicant is not allowed to hold two or more different customs rulings on a same subject matter.

3.0 Amendment of section 18A

Section 18A of the principal Act is amended by inserting after the word "section" the words "5B,".

Effective date: 1 April 2007

Comment:

The amendment is consequent to the introduction of section 5B of Part IIA.

4.0 Amendment of section 47

The principal Act is amended by substituting for section 47 the following section:

"Appeal to Customs Appeal Tribunal

47. (1) Any person aggrieved by a decision of the Director General may, except in any matter relating to compound or subsection 67(3), within thirty days of being notified of such decision in writing, appeal to the Customs Appeal Tribunal whose decision shall be final.

(2) All provisions relating to the Customs Appeal Tribunal shall be applicable to this Act.".

Effective date: To be notified

Comment:

The new section 47 is to enable any person aggrieved by the decision of the Director General, other than decisions relating to compound, to appeal to the Tribunal.

5.0 Deletion of section 47A

The principal Act is amended by deleting section 47A.

Effective date: To be notified

Comment:

This amendment is consequent to the amendment of section 47.

6.0 Amendment of section 74

Section 74 of the principal Act is amended -

(a) by substituting for subparagraph (1)(i) the following subparagraph:

"(i) in the case of locally manufactured –

(A) for the first offence, to a fine of not less than ten times the amount of the excise duty and of not more than twenty times the amount of the excise duty, or to imprisonment for a term not exceeding three years or to both; and

(B) for the second offence or any subsequent offence, to a fine of not less than twenty times the amount of the excise duty and of not more than forty times the amount the excise duty, or to imprisonment for a term not exceeding five years or to both:

Provided that when no excise duty is involved or the amount of excise duty cannot be ascertained, the penalty may amount to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years of to both;"; and

(b) by substituting for subparagraph (1)(ii) the following subparagraph:

"(ii) in the case of imported goods –

i. for the first offence, to a fine of not less than ten times the amount of the excise duty and of not more than twenty times the amount of the excise duty, or to imprisonment for a term not exceeding three years or to both; and

ii, for a second or any subsequent offence, to a fine of not less than twenty times the amount of the excise duty and of not more than forty times the amount of the excise duty, or to imprisonment for a term not exceeding five years or to both:

Provided that where the amount of the excise duty cannot be ascertained, the penalty may amount to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.".

Effective date: To be notified

Comment:

The amendment seeks to specify the minimum fines that can be imposed for offences committed under Excise Act.

7.0 Amendment of section 85

Subsection 85(2) of the principal Act is amended by inserting after paragraph (b) the following paragraphs:

"(*ba*) regulate the conduct of all matters relating to customs rulings;

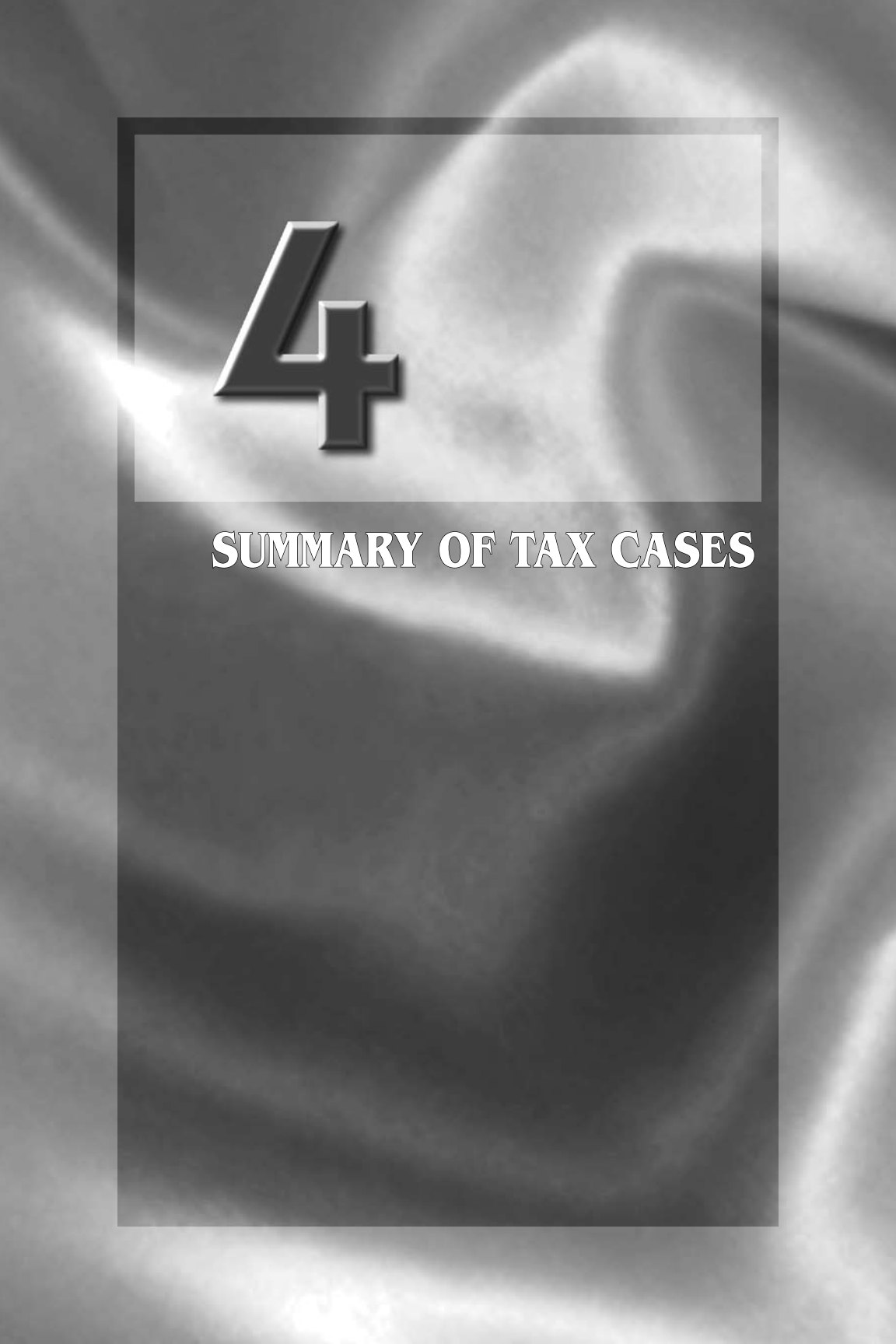
(*bb*) prescribe and impose fees relating to customs ruling and provide the manner for collecting and disbursing such fees;

(*bc*) prescribe the forms to be used for the purpose of customs rulings:".

Effective date: 1 April 2007

Comment:

The amendment of section 85 is to empower the Minister to make regulations in respect of customs ruling.



4

SUMMARY OF TAX CASES

A Malaysian Special Commissioners' Decisions

1.0 SFDC SDN. BHD. V KETUA PENGARAH HASIL DALAM NEGERI (2006) MSTC 3,619 (SPECIAL COMMISSIONERS OF INCOME TAX)

Facts

The taxpayer is a company in the business of marketing dermatological products. In the course of carrying on the business, it had introduced several incentive schemes to the salon owners (the taxpayer's customers). Under these schemes, customers who met the purchase targets set by the taxpayer would be given some form of incentives which included the following:

(i) Product rebates;

(ii) Cash rebates;

(iii) Cash rebates to be used by customers for the disbursement of overseas trips organised by the taxpayer;

(iv) Other benefits arising from the cash rebates, such as disbursement of the renovation cost and signboard of the taxpayer's customers; and

(v) Rebate for "professional work" seminars conducted by the taxpayer, such as product launching, product training and specialised training.

The Director General of Inland Revenue (DGIR) had issued Notices of Additional Assessment on 20 November 2003 for the years of assessment 1997 to 1999 and 2000 (current year basis) disallowing the above expenses except for product rebates.

The taxpayer, being aggrieved by the additional assessments, filed Form Q with the Special Commissioners of Income Tax (SC).

Issues

The issues for determination before the SC were whether expenses incurred in respect of the following are wholly and exclusively incurred in the production of income, within the meaning of Section 33 of the Income Tax Act 1967 (Act):

(i) Overseas travelling trips by the taxpayer's sales personnel.

(ii) Cash rebates given to customers who met purchase targets set by the taxpayer which were used by the customers to go on overseas trips organised by the taxpayer.

(iii) Cash rebates given to taxpayer's customers who met purchase targets and expenses relating to other benefits also arising from cash rebates.

(iv) Costs of promoting sales by way of training i.e. organising professional work" seminars for those customers who met the required purchase targets.

Arguments

Taxpayer

The above-mentioned expenses incurred by the taxpayer are wholly and exclusively incurred in its business and should be allowed as a deduction pursuant to Section 33 of the Act based on the following grounds:

(i) Overseas travelling expenses by the sales personnel

The taxpayer claimed that its sales personnel went on the overseas trips together with its customers for the following business purposes: -

- Product training in Sothy's Institute in USA and France;
- Securing/signing of sales contracts with salon owners who went on the trips;
- Building of business networking relationship with salon owners.

(ii)
- Cash rebates given to customers for overseas trips organised by the taxpayer
- Cash rebates given to customers who met the required purchase target
- Expenses incurred on renovation and signboards of customers who met the required target

The taxpayer argued that the above cash rebates were given as an incentive to increase the sale of its products and to promote its image as a whole.

(iii) Expenses incurred in organising "professional work" seminars

The taxpayer claimed that the above were incurred for promoting sales by way of training its customers on their products and hence, are wholly and exclusively incurred in the production of income, within the meaning of section 33 of the Act.

DGIR

The abovementioned expenses were incurred by the taxpayer in the provision of entertainment and should be disallowed pursuant to section 39(1)(*l*) of the Act as these were given to non-employees.

Decision:

The SC in dismissing the taxpayer's appeal on all the four issues and confirming the notices of additional assessment for the relevant years of assessment 1997 to 2000 gave the following reasons:

(i) Overseas travelling expenses by the sales personnel

Evidence adduced by the taxpayer failed to substantiate that the above expenses were wholly and exclusively incurred in the production of gross income based on the following reasons: -

(a) There was no documentary evidence on the itinerary of the overseas trips/activities undertaken in the visiting countries;

(b) There was no clear evidence to substantiate the taxpayer's claim that the purpose of their alleged visits were for training (e.g. the visit to Sothy's Institute only accounted for a day out of the 10-day trip made to the USA and this suggested that the overseas trips were more for sight-seeing);

(c) There was no evidence to show any sales contracts secured as a result of those trips.

Hence, taking into account that the overseas trips by the sales personnel were together with the customers who had met purchase targets, it was concluded that these expenses were incidental to the entertainment of the customers. The expenses, thus fell within the ambit of proviso to Section 39(1)(*l*) of the Act and were therefore not deductible.

(ii)
- Cash rebates given to customers who met the required purchase target
- Cash rebates given to customers for overseas trips organised by the taxpayer

In view that the provision of cash rebates for customers who met the required purchase targets was an incentive to increase the sales of the taxpayer's products as well as to enhance their image, it is considered that these rebates come within the provision of promotional gifts.

Since such expenses fall within the broad definition of the word "entertainment" in Section 18, the cash rebates would be specifically prohibited under Section 39(1)(*l*) of the Act.

(iii) Expenses incurred on renovation and signboard of customers who met the required target

The evidence adduced by the taxpayer was not corroborated by independent evidence to substantiate the claim that the cash rebates were given to the customers for renovation and signboard. Considering that the facts and circumstances of this expense is the same as the cash rebates given to customers who met the required target, it was found that this expense would also come within the definition of the word "entertainment" on the reasoning as mentioned above and would not qualify for a deduction.

(iv) Expenses incurred in organising "professional work" seminars

The "professional work" seminars conducted by the taxpayer were attended by the following types of customers:

(a) Customers who met the required sales target were entitled to attend the courses for free;

(b) Customers who met certain level of the purchase target were required to pay part of the training costs (depending on the level achieved by them); and

(c) Customers not reaching the purchase target were required to pay for the training costs in full.

In this regard, the taxpayer had failed to adduce documentary proof to substantiate that the expenses incurred for promoting sales by way of training its customers on their products was more than the amount collected from other participants of the training (i.e. customers who paid the training fees out of their own pockets).

Thus, the expenses incurred in organising these seminars do not fall within the ambit of Section 33(1) of the Act.

Editorial Note

It is to be noted that provision of entertainment was a non-deductible expense pursuant to section 39(1)(*l*) *of the* Act *prior to the year of assessment* 2004. *The revenue law was subsequently amended and effective from the year of assessment* 2004, *the provision of entertainment which is "related wholly to sales" is a deductible expense while certain entertainment expenses are partially allowable* (*i.e.* 50% *deduction*).

Further, the Public Ruling No. 3/2004 *issued by the* IRB *provides certain examples of expenditure which are considered to be "wholly related to sales" and they include expenditure on trips given as an incentive to dealers in achieving sales targets.*

It is understood that the taxpayer in SFDC's *case has appealed to the High Court on* SC's *decision, but the case has yet to be heard in the High Court.*

2.0 SYARIKAT KHCOM SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI (2006) MSTC 3,626 (SPECIAL COMMISSIONERS OF INCOME TAX)

Facts

Syarikat KHCom Sdn Bhd ("taxpayer") was incorporated on 22 January 1960 with an issued and paid-up capital of RM6,048,000 as at 31 December 2000. The principal activities of the taxpayer consist of:

(i) manufacturing and marketing of cooking oil, coconut oil, refined oil, soap, margarine, shortening and vanaspati;

(ii) distribution of animal and poultry feed; and

(iii) rubber milling

On 6 November 2000, the taxpayer was granted a certificate of pioneer status under the Promotion of Investments Act 1986 (PIA) for its promoted products "shortening and margarine". The pioneer status ran for a period of five years commencing from 1 May 1999 to 30 April 2004. In consequence of the grant of the pioneer certificate, 85% of the taxpayer's statutory income in respect of its promoted products was exempted from income tax for the year of assessment 2000 (Current Year).

In addition to the 85% exemption on the statutory income, the taxpayer made a claim for Reinvestment Allowance (RA) based on 60% of the capital expenditure incurred on manufacturing its non-promoted products.

The Director General of Inland Revenue (DGIR) disallowed the taxpayer's claim for the RA and raised a Notice of Assessment on 1 June 2002 for payment of income tax amounting to RM119,146.44. The taxpayer lodged an appeal against the assessment.

Issue

Whether paragraph 7(a)(ii) of Schedule 7A of the Income Tax Act 1967 ("the Act") precludes the taxpayer from claiming RA for its non-promoted products under paragraph 1 of Schedule 7A of the Act.

Arguments

Taxpayer

(i) The entitlement for RA claim was in pursuant to paragraph 7(a)(ii) of Schedule 7A of the Act and that the exclusion clause is only applicable to promoted product that has been granted pioneer status. In addition, a company is not refrained from claiming RA on the capital expenditure incurred on manufacturing its non-promoted products by the said paragraph. As it has not been clearly spelt out in the Act, the taxpayer is thus entitled to claim RA;

(ii) The sequence of amendments made to paragraph 7(a) of Schedule 7A via Act A643 & Act 328 indicated the intention of Parliament to exclude a pioneer company from claiming RA only in respect of its promoted products.

DGIR

(i) The taxpayer's eligibility to claim RA is excluded based on paragraph 7(a)(ii) of Schedule 7A of the Act;

(ii) The exclusion clause as provided under paragraph 7(a) of Schedule 7A of the Act places emphasis on the status of a company rather than the status of its activities or products (promoted or non-promoted);

(iii) Schedule 7A of the Act is a relief provision whereby all the conditions stipulated therein must be fulfilled before the taxpayer is entitled to the relief.

Decision

The taxpayer's appeal was dismissed on the following basis:-

(i) The exemption and exclusion of exemption is stressed more on the status of the company rather than to the

promoted activities or products. Once the company was granted the pioneer status for whatever product or activity, the company was excluded from claiming RA as provided under Schedule 7A.

(ii) Where there is ambiguity in granting relief, it should be resolved in favour of the Director-General.

3.0 AV v KETUA PENGARAH HASIL DALAM NEGERI (2007) MSTC 3,631 (SPECIAL COMMISSIONERS OF INCOME TAX)

Facts

AV (Malaysia) Sdn Bhd ("the taxpayer") is a Malaysian incorporated company with an issued and paid up capital of RM600,000 as at 31 March 2000. The principal activities of the taxpayer consist of steel and aluminium fabrication works and trading in building materials, electrical and electronic products.

In 2000, the taxpayer had banking facilities which were used for its trade and business purposes. The facilities comprised Overdraft, Overdraft against Progress Certificate, Term Loan, Letter of Credit/Trust Receipt and Bank Guarantee.

The taxpayer earned interest income of RM46,757 from the Fixed Deposits of RM936,580 placed by the taxpayer as security for banking facilities. On 20 February 2002 , the Director General of Inland Revenue (DGIR) issued a Notice of Assessment to assess the interest income under Section 4(c) of the Income Tax Act 1967 ("the Act"). The DGIR treated the Fixed Deposits as investments made and brought that investment into account when calculating interest restriction under Section 33(2) of the Act.

The taxpayer lodged an appeal against the assessment.

Issues

(i) Whether the interest income earned from the Fixed Deposits is subject to tax under Section 4(a) or Section 4(c) of the Act; and

(ii) Whether the Fixed Deposits are to be treated as investments made by the taxpayer otherwise than for the purpose of producing gross income from the business of the taxpayer and thus to subject the investment to interest restriction computation under Section 33(2) of the Act.

Arguments

Taxpayer

(i) The placement of Fixed Deposits is ancillary to the taxpayer's principal activity of performing construction works. Based on circumstances under which the Fixed Deposits were placed and considering the facts in totality, the placement of Fixed Deposits cannot be described as investments made by the taxpayer. Therefore, the interest income should be assessed under Section 4(a) instead of Section 4(c) of the Act.

(ii) The monies were placed in Fixed Deposits for security of the banking facilities as required by the Bank. The taxpayer did not intend to place the monies for investment. The taxpayer also argued that the Fixed Deposits were not financed from the borrowing but out of the progress payments received from the construction works performed by the taxpayer. Furthermore, the Fixed Deposits were placed solely for the purpose of producing the taxpayer's gross income from its business activity. Hence, the interest restriction under Section 33(2) is not applicable.

DGIR

(i) The interest income received by the taxpayer is derived from investment and not from business activities. Therefore, it is chargeable to tax under Section 4(c) of the Act.

(ii) The placing of deposits can be described as an investment and therefore the interest income received from that investment is subject to restriction under Section 33(2) of the Act.

Decision

The taxpayer's appeal was dismissed on the following grounds:-

(1) The taxpayer did not involve itself in any financial activities. To enable the interest income from the Fixed Deposits to be treated as business income under Section 4(a) of the Act, the taxpayer must show that the income is received in carrying on the business and the business is one which includes the regular lending of money. The burden of proof is on the taxpayer.

(2) In the case of Isyoda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri, it was held that the interest income derived from the Fixed Deposits was ancillary to the appellant's business and therefore chargeable to tax as a business source under Section 4(a) of the Act. It was evidenced in the above case that the appellant will not be awarded with the project if the appellant failed to provide the bank guarantee.

In the present case, there was no evidence to support the taxpayer's contention that placing of Fixed Deposits was ancillary to the taxpayer's principal activity and formed part of the whole set of taxpayer's business operation. The taxpayer did not adduce any evidence to show that failure to provide a bank guarantee will prejudice the taxpayer in being awarded any project.

(3) The income derived from the placing of the fixed deposit was an income from investment and rightly assessed under Section 4(c) of the Act. Since, the Fixed Deposits is an investment of the taxpayer, the interest restriction under Section 33(2) of the Act is applicable.

B Malaysian Courts' Decisions

1.0 TERUNTUM THEATRE SDN BHD. V KETUA PENGARAH HASIL DALAM NEGERI (2006) MSTC 4,250 (COURT OF APPEAL)

Facts

In 1973, taxpayer purchased three lots of land to build a cinema and applied to the municipality for approval but the application was rejected in October 1980. In December 1980, the taxpayer sold 89% of the undivided parcel of land for RM10 million. The remaining undivided portion of the land was sold for RM13 million.

The taxpayer was assessed to real property gains tax under the Real Property Gains Act 1976 (RPGTA) on the gains made arising from the disposal of the property and a Certificate of Clearance was issued after the tax assessed was paid. Subsequently, the Director General of Inland Revenue (DGIR) changed its stand and took the position that the gain from the sale of land should be subject to income tax under the Income Tax Act 1967(ITA) instead. Following this change of stand, the taxpayer was informed that the assessment would be vacated and the real property gains tax paid transferred to the taxpayer's income tax account.

The gain arising from the disposal of the property was then assessed to income tax under Section 4(a) of the ITA with notices of assessment being issued for years of assessment 1983 and 1985.

Issues

(i) Having assessed the taxpayer for real property gains tax under the RPGTA, and upon payment of the sum assessed and a Certificate of Clearance issued, whether the DGIR could vacate the assessment and reassess the taxpayer for income tax on the same receipt as a trading gain under the ITA; and

(ii) Whether the sale of lands amounted to a trading gain under the ITA.

Arguments

Taxpayer

First Issue:

(i) The assessment under the RPGTA was final and conclusive once the real property gains tax had been paid and a Certificate of Clearance issued by the DGIR.

(ii) The DGIR was precluded from raising an assessment for tax since the finalisation of the real property gains tax assessment estopped the DGIR from proceeding with the assessment for income tax and if such an assessment was raised, it would amount to double taxation.

Second Issue:

(i) The said properties were purchased as an investment for the purpose of erecting a cinema hall subject to approval being obtained.

(ii) No development of the asset was undertaken in the first five years, which meant there was no maturing of the asset.

(iii) The acts of conversion of the category of land use, the eviction of squatters on the subject properties and the sums spent on development expenditure and pre-operational costs, were but in furtherance of the intention to build a cinema hall with the supporting facilities.

(iv) There was nothing to show that the taxpayer was trafficking in land and the sale of the properties were in the present circumstances of the case, capital in nature, being proceeds from the sale of an investment and were therefore not subject to income tax.

DGIR

First Issue:

(i) Estoppel cannot be invoked against the DGIR when he was aware that an incorrect assessment has been made under the RPGTA.

(ii) The DGIR cannot raise an estoppel against himself from discharging his statutory duty to raise a correct assessment under the appropriate law if the basis of treating the gain as a capital gain was not under the RPGTA and that no real property gains tax was payable . The DGIR in such a

situation was not absolved from discharging his duty to raise a correct assessment under the relevant law (in this case the ITA).

Second Issue:

(i) The following evidence shows that the dominant purpose of the taxpayer was to purchase the whole land subject to a subsidiary purpose of erecting a cinema on a portion of the land:

(a) the cinema and parking area occupies only 20% of the total area of land acquired.

(b) the purchase was effected even without being successful in obtaining approval to build a cinema.

(c) the non-cinema land is not subject to any restriction, condition and limitation.

(d) a long period was taken to submit the plans for approval (5 years).

(e) steps taken which led to the maturing of the asset e.g. conversion of land from residential to limited commercial category and incurring development costs.

(f) land was sold in parts with plans to subdivide, giving it a trading character.

(g) appointment of a broker and paying brokerage commission to find purchasers.

(ii) It was not a 'forced sale' consequent to the non-approval of the building of a cinema.

Decision

The Court of Appeal ruled that capital gains assessed to real property gains tax under the Real Property Gains Tax Act 1976 (RPGTA) can be reassessed as income under the Income Tax Act 1967 (ITA). The decision was based on the following reasons:

(i) There is no rule of law that precludes the DGIR from discharging the assessment under the RPGTA and proceeding with an assessment under the ITA.

(ii) The taxpayer was not being subject to double taxation because the assessment under RPGTA was cancelled and the real property gains tax paid under the RPGTA was transferred to taxpayer's income tax account.

The Court also found that the taxpayer was trading in land constituting an adventure in the nature of trade and that the transaction was not a realisation of a capital asset. The gains made from the sale of land were therefore, revenue receipts that were taxable under Section 4(a) of the ITA. The reasons for their finding were as follows:

(i) The subject properties were sold in parts with plans to subdivide them giving it the characteristic feature of a trading activity;

(ii) The steps taken by the taxpayer such as conversion of the land, incurring development expenditure and eviction of squatters could be regarded as a maturing of the asset;

(iii) Special efforts taken to find and attract purchasers by appointing a broker and thus incurring travelling expenses and broker's commission in connection with the sale of the land;

(iv) The Memorandum & Articles of Association enabled the taxpayer to traffic in land.

2.0 KETUA PENGARAH HASIL DALAM NEGERI v PENANG REALTY SDN BHD (2006) MSTC 4,256 (COURT OF APPEAL)

Facts

Penang Realty Sdn Bhd ("taxpayer") was incorporated in 1956 and was carrying on businesses of housing development and other business relating to realties such as letting of houses, to buy, sell, manage immoveable properties, etc. In 1956, the taxpayer bought the subject land and portions of the subject land in their undeveloped state were sold regularly from 1956 to 1980. The taxpayer paid income tax on the profits derived from those disposals.

In 1967, the taxpayer embarked into building houses on part of the subject land for renting to the Royal Australian Air Force (RAAF). The houses were to be built in three phases. Out of 85 units of houses built in Phase I, 75 units were rented to RAAF and 7 units which were rejected by RAAF, were sold. The taxpayer paid income tax on the profits derived from the sale of the 7 units. When the newer houses were built in Phase III, the RAAF decided

to rent the new houses. As such, the older houses built in Phases I and II (total of 88 units) were left unoccupied. The taxpayer then sold the unoccupied houses. The DGIR assessed the gains on disposal of the old units as trading gains. The taxpayer disputed the assessment on the basis that the houses were built for the purpose of investment and thus the profits derived from the sale were due to capital appreciation.

Under a separate transaction, a portion of the subject land (Bandar Tanjong Bongah) was compulsorily acquired by the Government in August, 1980. The Government awarded a compensation of RM1,035,762.91 for the acquisition. The DGIR assessed the compensation as trading gain. The taxpayer was unhappy with the assessment and argued that the compulsory acquisition was not a trading transaction.

The Special Commissioners confirmed the DGIR's position on both assessments. The High Court affirmed the Special Commissioners' decision in respect of sale of houses but reversed the decision in respect of the compensation. Consequently, both parties appealed to the Court of Appeal.

Issues

(i) Whether the compensation received as a result of compulsory acquisition of a portion of the taxpayer's land is subject to income tax.

(ii) Whether the sale of the 88 units of houses built on the subject land was a realisation of its investment (and therefore any profits derived from the transaction will not be taxed.) or a disposal in the course of the taxpayer's business, which profits are subject to tax.

First Issue: Compulsory land acquisition

Arguments

Taxpayer

The taxpayer argued that the land was compulsory acquired and hence the question of trading does not arise. The taxpayer relied on the *Lower Perak Cooperative Housing Society Bhd v Ketua Pengarah Hasil Dalam Negeri* case where it was stated that no tax is leviable on the profits made on account of compulsory acquisition of the appellant's property.

DGIR

Compulsory acquisition of land by the Government is just like the sale of any other piece of land by the taxpayer. Citing the case of F H*ousing Sdn Bhd v Director General of Inland Revenue*, the compensation received is the receipt of a payment from the Government in lieu of a receipt from an ordinary purchaser which would have formed part of the taxpayer's trading profit and as such the sum received is taxable.

Second Issue: Disposal of houses

Arguments

Taxpayer

(i) The subject land was purchased for investment. The houses were built specifically for rental to the RAAF and not for sale. As such, the 88 units of houses do not fall within the definition of "stock in trade". Those houses could only come within that definition if the taxpayer were in the business of building houses for sale such as is done by a housing developer. Since those houses were not stock in trade, their sale would not be subject to income tax.

(ii) None of the badges of trade applied to them. As such, the sale of the 88 units of houses was not trading but disposal of capital assets.

DGIR

The DGIR contended that the disposal of the houses was in the course of the taxpayer's trading activity and therefore the profits are subject to tax.

Decision

The Court of Appeal dismissed the appeal on the first issue by the DGIR. It was held that gains arising from the compulsory acquisition by the Government were not subject to income tax because the element of compulsion vitiates the intention to trade.

The Court of Appeal dismissed the appeal by the taxpayer in regard to the second issue and upheld the decision of the High Court as follows:

(i) Trading requires intention to trade and the question to be asked is whether this intention existed at the time of the acquisition of the asset. The taxpayer's intention must be gathered from surrounding circumstances. If the intention

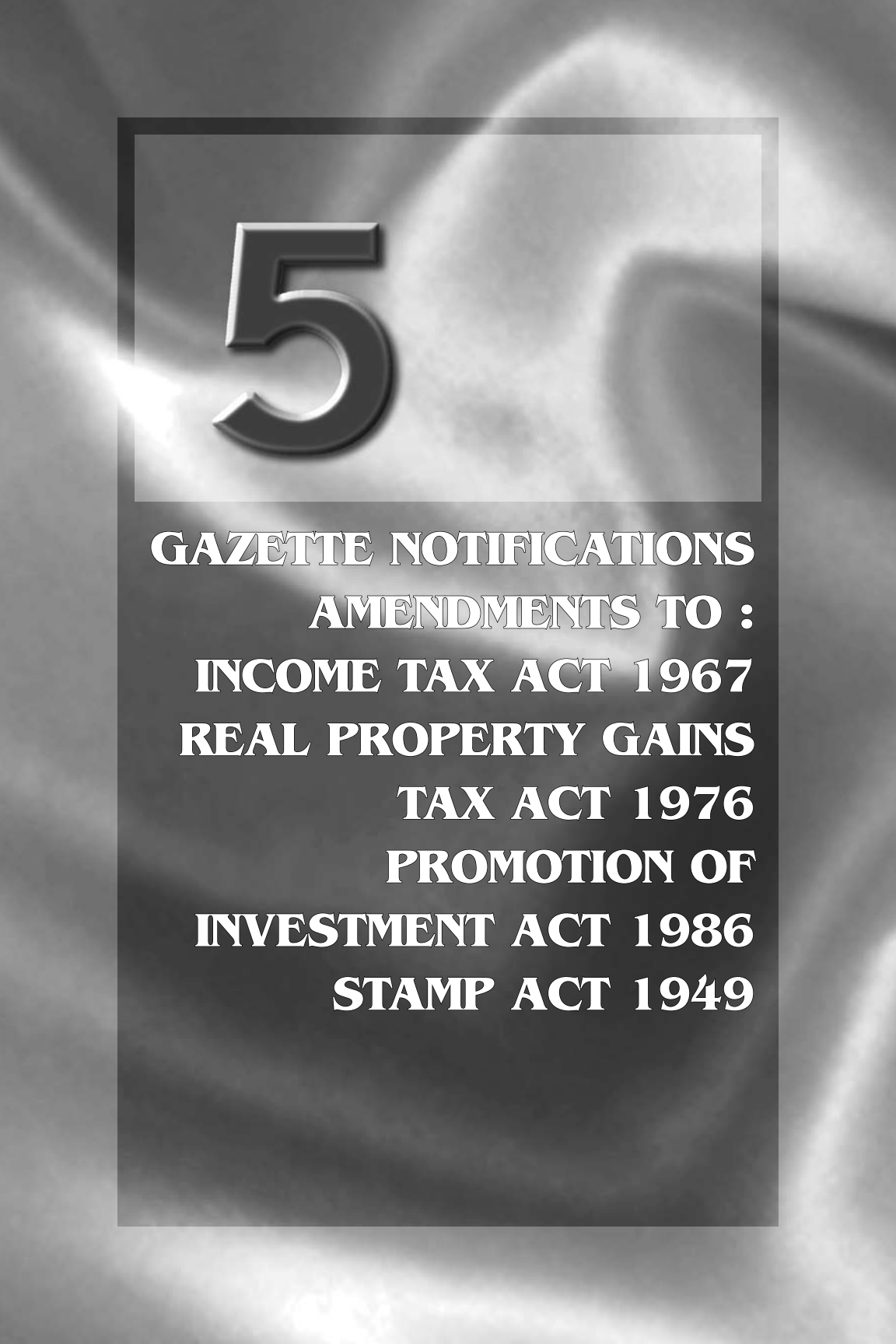
of the taxpayer is true that the houses were built for investment purposes, those houses would be kept as an investment to be rented out to whoever else and to reap the rental income out of investment. But this is not true because the taxpayer was not prepared to rent them out to persons other than the RAAF for the reason that they would not fetch higher rental than what RAAF paid. So the construction of the houses on the subject land meant for sale cannot be construed as an investment by the taxpayer.

(ii) If it is established that the dominant purpose in the acquisition of property was its resale at a profit, the presence of other purposes, such as rental of that property does not remove any profit on ultimate sale from the taxable area. In the present case, the dominant purpose for which the subject land was originally acquired was clear, i.e. its resale at a profit. The construction of the houses on the unsold portion of the subject land was to enhance the value of that portion so that when that portion were to be sold later on when their immediate purpose for the construction is served, more profit could be derived.

(iii) The subject land on which the houses stood is not the taxpayer's capital asset. The subject land remained its stock-in-trade and the houses were constructed on it purely to snap on the advantageous position of the rental to be paid by the RAAF and when the purpose is no longer served, the houses together with the acres of land on which they stood were disposed off. So, the houses with which it dealt with cannot be regarded as the taxpayer's capital asset, they being transient in nature.

(iv) There was no evidence that if the taxpayer had kept those houses for rental, the taxpayer would suffer losses. The taxpayer submitted that if the houses were kept for rental, it wouldn't fetch a high rental as offered by the RAAF. There was therefore no justification for the taxpayer to dispose of those houses. The element of forced sale was not present.

(*Note*: *Please refer to the "Decision Impact Statement" which describes the* DGIR *position in relation to the said decision and how the law will be administered by the* IRB *as a consequence of the decision*).



5

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

Gazette Notifications in 2006 (Jan 2006 to Dec 2006)

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

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
1	Income Tax (Exemption) Order 2006	2	5 Jan 2006	Lease rental payments of Atlas Air Inc. received from Malaysia Airlines Cargo Sdn. Bhd. pursuant to Assignment and Indemnity Agreement dated 1 August 2001 commencing from 20 October 1999 until 19 October 2002, are exempted from payment of income tax.	20 Oct 1999
2	Income Tax (Exemption) (No. 2) Order 2006	3	5 Jan 2006	All income except dividend income received by South East Asia Iron & Steel Institute from the year of assessment 2000 in respect of the basis period ending in the year 2000 until the year of assessment 2006, are exempted from payment of income tax.	YA 2000 (basis period ending in the year 2000)

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
3	Income Tax (Exemption) (No. 3) Order 2006	4	5 Jan 2006	Interest income received by Yayasan Pelajaran Pertubuhan Peladang MADA as set out in the Schedule of the gazette order from the year of assessment 1986 until the year of assessment 1992, are exempted from payment of income tax.	YA 1986 until the YA 1992
4	Income Tax (Exemption) (No. 4) Order 2006	5	5 Jan 2006	Discount or profit received by United Engineers (Malaysia) Berhad on redemption of SPV Bond issued by Renong Debt Management Sdn. Bhd. to Projek Lebuhraya Utara–Selatan (PLUS) pursuant to the restructuring exercise of the United Engineers Malaysia Group, is exempted from payment of income tax.	31 May 2002
5	Income Tax (Exemption) (No. 5) Order 2006	6	5 Jan 2006	70% of the statutory income in relation to all income other than dividend income received by MARA Education Foundation from the year assessment 1997 until the year of assessment 2000 (2000 basis year), are exempted from payment of income tax.	YA 1997 until the YA 2000 (2000 basis year)

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
6	Income Tax (Exemption) (No. 6) Order 2006	7	5 Jan 2006	Statutory income in relation to its sources of income specified in the Schedule of the gazette order received by Lembaga Perindustrian Nanas Malaysia, are exempted from payment of income tax.	YA 2001
7	Income Tax (Exemption) (No. 7) Order 2006	8	5 Jan 2006	Statutory income in relation to its sources of income specified in the Schedule of the gazette order received by Malaysian Rubber Export Promotion Council, are exempted from payment of income tax.	YA 2000 and 2001
8	Income Tax (Exemption) (No. 8) Order 2006	9	5 Jan 2006	Statutory income in relation to all income other than dividend income received by Bank Pertanian Malaysia from the year of assessment 1991 until the year of assessment 2001, are exempted from payment of income tax.	YA 1991
9	Income Tax (Returns by Employers) Order 2006	14	5 Jan 2006	Employers Return for year 2005.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
10	Income Tax (Exemption) (No. 9) Order 2006	50	9 Feb 2006	Statutory income received by a company resident in Malaysia in relation to a new project for a period of ten consecutive years of assessment, is exempted from payment of income tax commencing from the first year of assessment in which the company derived statutory income in relation to that project.	YA 2001
11	Income Tax (Exemption) (No. 10) Order 2006	51	9 Feb 2006	A company resident in Malaysia is exempted from payment of income tax in relation to: (a) a new project for a period of ten consecutive years of assessment, in respect of its statutory income, commencing from the first year of assessment in which the company derived statutory income in relation to that project; or	YA 2001 for a new project YA 2002 of an expansion project

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
				(b) an expansion project for a period of five consecutive years of assessment, in respect of the statutory income from its existing and expansion projects, commencing from the first year of assessment in which the company derived statutory income in relation to the existing and expansion projects, and the first year of assessment shall not be earlier than the year of assessment in the basis period in which the date of approval from the Minister falls;	
12	Stamp Duty (Exemption) (No. 4) Order 2006	53	9 Feb 2006	All instruments executed by BNM Sukuk Berhad in relation to the Sukuk Bank Negara Malaysia-Ijarah where the stamp duty due would ordinarily be payable by BNM Sukuk Berhad, are exempted from stamp duty.	8 Feb 2006

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
13	Real Property Gains Tax (Exemption) (No. 4) Order 2006	54	9 Feb 2006	Chargeable gains accruing by any person on the disposal of any chargeable asset in relation to the Sukuk Bank Negara Malaysia-Ijarah issued or to be issued by BNM Sukuk Berhad, are exempted from payment of real property gains tax.	8 Feb 2006
14	Income Tax (Deduction for Investment in an Approved Food Production Project) Rules 2006	55	9 Feb 2006	An amount equivalent to the value of investment made in the project which is approved by the Minister in that basis period for the sole purpose of financing an approved food production project are allowed as a deduction in the basis period for a year of assessment.	YA 2001
15	Income Tax (Accelerated Capital Allowance) (Conservation of Energy) (Revocation) Rules 2006	64	23 Feb 2006	Revocation of Income Tax (Accelerated Capital Allowance) (Conservation of Energy) Rules 2003 [PU (A) 349/2003] Where a company had incurred qualifying plant expenditure on or before 30 September 2005 and has been allowed the accelerated capital allowance under the revoked Rules is entitled to claim the accelerated capital allowance under the revoked Rules until the allowance is fully absorbed.	1 Oct 2005

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
16	Income Tax (Exemption) (No. 4) Order 2005	81	2 Mar 2006	Corrigendum to Income Tax (Exemption) (No. 4) Order 2006 (PU (A) 5), substituting the word "2005" with "2006" in the title and subparagraph 1(1) to 2006.	–
17	Income Tax (Exemption) (No. 5) Order 2005	82	2 Mar 2006	Corrigendum to Income Tax (Exemption) (No. 5) Order 2006 (PU (A) 60), substituting the word "2005" with "2006" in the title and subparagraph 1(1) to 2006	–
18	Income Tax (Exemption) (No. 6) Order 2005	83	2 Mar 2006	Corrigendum to Income Tax (Exemption) (No. 6) Order 2006 (PU (A) 7), substituting the word "2005" with "2006" in the title and subparagraph 1(1) to 2006	–
19	Income Tax (Exemption) (No. 7) Order 2005	84	2 Mar 2006	Corrigendum to Income Tax (Exemption) (No. 7) Order 2006 (PU (A) 8), substituting the word "2005" with "2006" in the title and subparagraph 1(1) to 2006	–
20	Income Tax (Exemption) (No. 11) Order 2006	112	23 Mar 2006	Statutory income from an approved business received by a company resident in Malaysia, are exempted from payment of income tax.	YA 1998

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
21	Income Tax (Exemption) (No. 12) Order 2006	113	23 Mar 2006	Statutory income from an approved business which is equivalent to the amount of allowance as determined in the gazette order, received by a company resident in Malaysia, are exempted from payment of income tax.	YA 1998
22	Income Tax (Exemption) (No. 13) Order 2006	114	23 Mar 2006	Statutory income from all sources other than dividend income, received by RosettaNet Malaysia Berhad from the year of assessment 2002 until the year of assessment 2004, are exempted from payment of income tax.	YA 2002 until the YA 2004
23	Income Tax (Deduction for Audit Expenditure) Rules 2006	129	30 Mar 2006	An amount equivalent to the amount of statutory audit fees expenditure incurred in that basis period are allowed a deduction for the purpose of ascertaining the adjusted income of a company from its business.	YA 2006

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
24	Income Tax (Deduction for Establishment Expenditure of Real Estate Investment Trust or Property Trust Fund) Rules 2006	135	30 Mar 2006	An amount equivalent to the amount of establishment expenditure incurred by a unit trust are allowed a deduction for the purpose of ascertaining the adjusted income of a unit trust from its business.	YA 2006
25	Stamp Duty (Remission) (Revocation) Order 2006	147	13 Apr 2006	Revocation of the Stamp Duty (Remission) (No. 3) Order 2001 [P.U. (A) 159/2001]	–
26	Stamp Duty (Remission) (No. 2) Order 2006	148	13 Apr 2006	Remission of 50% of the stamp duty payable on the instrument of a loan agreement for an amount not exceeding one million ringgit granted or to be granted to a small and medium enterprise.	1 Oct 2005
27	Income Tax (Exemption) (No. 14) Order 2006	178	18 May 2006	Pension derived from sources outside Malaysia and received in Malaysia, by Augustinus Lambertus Antonius Van Bladel, (Passport Number NE0027718) under the Malaysia My Second Home programme commencing from 1 April 2001 until 31 December 2003, are exempted from payment of income tax.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
28	Income Tax (Exemption) (No. 15) Order 2006	179	18 May 2006	Income received by foreign artistes specified in the Schedule of the gazette order from the show "Mariah Carey Live In Malaysia 2004" held at the Stadium Merdeka, Kuala Lumpur on 22 February 2004, are exempted from payment of income tax.	–
29	Income Tax (Exemption) (No. 16) Order 2006	180	18 May 2006	Income received by foreign artistes specified in the Schedule of the gazette order from the show "Faye Wong Live In Malaysia 2004" held at the Stadium Merdeka, Kuala Lumpur on 23 April 2004, are exempted from payment of income tax.	–
30	Income Tax (Deduction for Expenditure Incurred for the Development and Compliance of New Courses by Private Higher Education Institutions) Rules 2006	184	25 May 2006	An amount equal to one-third of the expenditure for that year of assessment and for each of the two following years of assessment are allowed as deduction in ascertaining adjusted income of the business of a private higher education institution which has incurred expenditure for the development and compliance of new courses.	YA 2006

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
31	Income Tax (Exemption) (No. 17) Order 2006	195	1 June 2006	Expatriate official income received by Dr. Elizabeth Jane Asteraki (Passport Number 030626369) which is sponsored by CAB International in relation to her period of service commencing from 15 July 2005 until 14 July 2008, is exempted from payment of income tax.	–
32	Income Tax (Exemption) (No. 18) Order 2006	196	1 June 2006	Official emoluments received Bradley Phillip Tipka (Passport Number 710948312), who is in Malaysia solely for the purpose of serving the Maktab Perguruan Sultan Abdul Halim, Sungai Petani, Kedah for service commencing from 1 September 2005 until 30 June 2006, are exempted from payment of income tax.	–
33	Income Tax (Industrial Building Allowance) (Approved Multimedia Super Corridor (MSC) Status Company) Rules 2006	202	1 June 2006	Industrial Building Allowance in respect of qualifying building expenditure incurred for the approved MSC activities by the owner of a building, the construction or purchase of the building in the Cyberjaya Flagship Zone which is used for the purpose of his business as an approved MSC status company or rented out to an approved MSC status company.	YA 2006

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
34	Income Tax (Deduction for Allowances Under the Capital Market Unemployed Graduates Training Scheme) Rules 2006	203	1 June 2006	An organisation resident in Malaysia shall be allowed a deduction in respect of allowances paid to a trainee for undergoing the training scheme, for a period of three (3) years from the date of certification of that training scheme.	1 Oct 2005
35	Income Tax (Exemption) (No. 19) Order 2006	204	1 June 2006	Statutory income relating to all its income received by Islamic Corporation for the Development of Private Sector from the year of assessment 2000 and subsequent years of assessment, are exempted from payment of income tax.	YA 2000
36	Income Tax (Exemption) (No. 20) Order 2006	205	1 June 2006	Any qualifying person receiving income from the management of an international school from 10 September 2004, is exempted from payment of income tax.	10 Sept 2004
37	Income Tax (Exemption) (No. 21) Order 2006	206	1 June 2006	Income derived from Malaysia by a non-resident expert from 1 October 2005 until 30 September 2010 for providing training in the field of related expert areas, crafts and performing arts as verified by the Ministry of Culture Arts and Heritage, are exempted from payment of income tax.	1 Oct 2005

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
38	Income Tax (Exemption) (No. 22) Order 2006	207	1 June 2006	Income of any person in respect of income relating to allocations given by the Federal Government or the State Government in form of a grant or a subsidy; and income of a statutory authority received in respect of an amount chargeable and collectible from any person in accordance with the provisions of the Act regulating the statutory authority or any donation or contribution received are exempted from payment of income tax.	YA 2006
39	Double Taxation Relief (The Government of The State of Kuwait) Order 2006	210	8 June 2006	Agreement between the Government of Malaysia and the Government of the State of Kuwait for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and for the fostering of economic relations.	–
40	Double Taxation Relief (The Government of the Kingdom of Saudi Arabia) Order 2006	225	15 June 2006	Agreement between the Government of Malaysia and the Government of the Kingdom of Saudi Arabia for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
41	Petroleum (Income Tax) (Deduction for Audit Expenditure) Rules 2006	229	15 June 2006	An amount equivalent to the amount of statutory audit fees expenditure incurred in the basis period for that year of assessment are allowed a deduction for the purpose of ascertaining the adjusted income of a company from its business.	YA 2006
42	Income Tax (Exemption) (No. 23) Order 2006	230	15 June 2006	Productivity allowance or incentive allowance of a pilot and cabin crew received from exercising employment with Malaysia Airline System Berhad, are exempted from payment of income tax.	YA 2005
43	Income Tax (Accelerated Capital Allowance) (Mould for the Production of Industrialised Building System Component) Rules 2006	249	29 June 2006	Accelerated Capital Allowance in respect of qualifying plant expenditure incurred on the purchase of mould used in the production of industrialised building system component for the purposes of the business of a manufacturing company or a construction company.	YA 2006
44	Income Tax (Exemption) (Amendment) Order 2006	275	27 July 2006	Addition to the Schedule in Income Tax (Exemption) (No. 9) Order 2002 [P.U.(A) 57/2002] after item 13 :- 14. Engineering services. 15. Printing services. 16. Local franchise services.	YA 2006

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
45	Real Property Gains Tax (Exemption) (No. 7) Order 2006	281	3 Aug 2006	A public company pursuant to an approved scheme of merger or acquisition including its subsidiaries companies, is exempted from payment of real property gains tax on chargeable gains accruing on disposal of any chargeable assets completed not later than 31 December 2008.	1 Oct 2005
46	Stamp Duty (Exemption) (No. 12) Order 2006	282	3 Aug 2006	All instruments executed pursuant to an approved scheme of merger or acquisition executed not later than 31 December 2008, are exempted from payment of stamp duty.	1 Oct 2005
47	Double Taxation Relief (The Republic of Indonesia) (Amendment) Order 2006	285	10 Aug 2006	Protocol amending the agreement between the Government of Malaysia and the Government of the Republic of Indonesia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and its protocol signed at Kuala Lumpur on 12 September 1991.	–

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
48	Income Tax (Industrial Building Allowance) (Approved Multimedia Super Corridor (MSC) Status Company) Rules 2006 Corrigendum	317	24 Aug 2006	Corrigendum to Income Tax (Industrial Building Allowance) (Approved Multimedia Super Corridor (MSC) Status Company) Rules 2006 (PU (A) 202) by substituting the words "60A" and "60F" appearing in paragraph 6 with the words "60F" and "60FA" respectively.	–
49	Income Tax (Exemption) (No. 24) Order 2006	363	5 Oct 2006	Interest received from the Kuwait Finance House (Malaysia) Berhad by non-resident depositor from the year of assessment 2006, are exempted from payment of income tax.	YA 2006
50	Income Tax (Exemption) (No. 25) Order 2006	398	2 Nov 2006	Income received by foreign artistes specified in the Schedule of the gazette order from the show "Konsert Kedermawaan Hospital Tung Shin" held at the Stadium Putra, Bukit Jalil, Kuala Lumpur on 23 May 2004, are exempted from payment of income tax.	–
51	Income Tax (Exemption) (Revocation) Order 2006	411	30 Nov 2006	Revocation of Income Tax (Exemption) (No. 5) Order 2004 [P.U.(A) 84/2004]	YA 2004

NO	TITLE	REFER P.U.(A)	DATE OF GAZETTE NOTIFI-CATION	SUBJECT	EFFECTIVE DATE/PERIOD
52	Income Tax (Exemption) (Amendment) (No. 2) Order 2006	420	14 Dec 2006	Amendments to subparagraph 4(a) of the Income Tax (Exemption) (No. 11) Order 2005 [P.U.(A) 75/2005], by inserting after the words "venture companies" the words "or where the investment is in the form of seed capital at least fifty per cent of its invested funds".	YA 2007
53	Promotion of Investment (Promoted Areas) (Amendment) Order 2006	430	21 Dec 2006	Amendments to subparagraph 2(1) of Promotion of Investment (Promoted Areas) Order 1994 [P.U.(A) 482/94], by inserting after the word "Malaysia," the words "the State of Perlis,".	2 Sept 2006
54	Income Tax (Deduction from Remuneration) (Amendment) Rules 2006	451	31 Dec 2006	Amendment to rule 17 of Income Tax (Deduction from Remuneration) (Amendment) Rules 1994 [P.U.(A) 507/1994], by substituting the words "exceeding one thousand ringgit" with the words "less than two hundred ringgit and not more than two thousand ringgit".	1 Jan 2007

6

GUIDELINES FROM MINISTRY OF FINANCE AND BANK NEGARA MALAYSIA

GUIDELINES ON CHANGE OF SHAREHOLDERS TEST FOR THE PURPOSE OF SECTION 44(5A) PARAGRAPH 75A TO SCHEDULE 3 OF THE INCOME TAX ACT 1967

The Budget 2006 has introduced the new provisions with respect to the carry forward of losses and capital allowances, Section 44(5A) and 44(5B), Paragraphs 75A and 75B to Schedule 3 of the ITA ("ITA"). With effect from the year of assessment 2006, a "substantial shareholder" test has been introduced to determine if a company's unabsorbed tax losses and capital allowances are allowed to be carried forward to benefit future years of assessment.

In order for a company to carry forward its losses and capital allowances for future benefits, the new provisions require a comparison of the:

i. the shareholders of the company on the "last day of the basis period' for a YA; and

ii. the shareholders on the "first day of the basis period" for the YA in which such amount would be available for deduction to the company.

Under the new provisions, losses and capital allowances shall be disregarded and disallowed for set off against a company's future taxable profits if there is a substantial change in the shareholders (ie more than 50 per cent change in the share ownership of the company).

The MOF had issued the guidelines on the procedure for the implementation of the tax treatment of brought forward losses and unabsorbed capital allowances as follows:-

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

   As such, companies are required to confirm that there was no substantial change in the ultimate shareholders with the following procedure required:-

Type of Company	Confirmation of no substantial change of ultimate shareholder
Public listed companies (PLC)	Certification from the PLCs:- 1. External auditor; or 2. Company secretary. In absence of above, certification from the PLC's:- 1. Audit committee, 2. Financial controller or 3. Director.
Non-public listed companies (non-PLC)	Non-PLC to provide a listing of the company's ultimate shareholders showing that there is no substantial change in the ultimate shareholders; or To provide confirmation from the non-PLC's:- 1. External auditor; or 2. Company secretary If the above are still not obtainable, certification from the non-PLC's:- 1. Audit committee, 2. Financial controller or 3. Director

2. A company with a substantial change of the ultimate shareholders will be exempted from the "substantial shareholder" test by the MOF if the substantial change is the result of the following activities:

   a. Privatisation of Government-owned enterprises;

   b. Nationalisation; and

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

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LIBERALISATION OF THE FOREIGN EXCHANGE ADMINISTRATION POLICIES

Bank Negara Malaysia announced further liberalisation of the foreign exchange administration policies. The liberalisations are part of the Bank's continuous efforts to enhance Malaysia's competitiveness through reducing the cost of doing business, increasing efficiency of the regulatory delivery system, promote a progressive and competitive financial system, encouraging effective risk management activities while safeguarding economic and financial stability. With effect from 1 April 2007, the foreign exchange administration rules will be liberalised to facilitate further development of the financial and capital markets and provide greater flexibilities for businesses to actively manage financial risks. The liberalisation will expand the scope of licensed onshore banks' foreign currency business and facilitate investments in ringgit assets by non-residents. The measures will also promote greater flexibilities for business to manage and finance investment opportunities and also contribute to increasing the depth and breadth of Malaysia's capital market.

1. Facilitating the development of the domestic financial market

To provide greater flexibility to licensed onshore banks to undertake foreign currency business, the following policies have been liberalised:

a. Abolish the net open position limit of licensed onshore banks. Previously, the open position limit was capped at 20% of the banks' capital base.

b. Abolish the limits imposed on licensed onshore banks for foreign currency accounts maintained by residents.

c. Allow investment banks in Malaysia to undertake foreign currency business subject to a comprehensive supervisory review on the capacity and capability of the investment banks.

2. Facilitating investments in ringgit assets by non-residents to promote Malaysia as an investment destination

To widen the investor base for ringgit assets and financial products, the following liberalisations are granted:

a. Further flexibility for non-resident stockbroking companies and custodian banks to obtain ringgit overdraft facilities from licensed onshore banks to avoid settlement failure due to inadvertent delays by:

- o Removing the previous overdraft limit of MYR200 million; and
- o Expanding the scope on utilisation of the overdraft facility to include ringgit instruments settled through the Real Time Electronic Transfer of Funds and Securities (RENTAS) System and Bursa Malaysia. Previously, utilisation of the facility was confined only to shares traded on Bursa Malaysia.

b. Abolish the limit on the number of residential or commercial property loans obtained by non-residents. Under the previous policy, non-residents were allowed to obtain a maximum limit of 3 property loans from residents to finance the purchase or construction of residential or commercial properties in Malaysia.

c. Allow licensed onshore banks to appoint overseas branches of their banking group as a vehicle to facilitate the settlement of any ringgit assets of their non-resident clients.

d. Remove restriction on Labuan offshore banks to transact in ringgit financial products on behalf of non-resident clients.

3. Enhancing business efficiency and facilitate development of the capital market

Further foreign exchange administration flexibilities are granted to residents to increase business efficiency by reducing the cost of doing business as well as enhancing the depth and breadth of the capital market as follows: -

a. Increase the limit of foreign currency borrowing that can be obtained by resident corporations from licensed onshore banks and non-residents as well as through issuance of onshore foreign currency bonds, to MYR100 million equivalent in aggregate and on corporate group

basis from the previous MYR50 million equivalent. The proceeds may be used for domestic purposes or offshore investment.

b. Allow residents to hedge foreign currency loan repayment up to the full amount of underlying commitment.

c. Enhance flexibilities for resident individuals and corporations to invest in foreign currency assets as follows:

   i. Increase the limit for resident individuals with domestic ringgit borrowing to invest in foreign currency assets up to MYR1 million per calendar year from the previous limit of MYR100,000; and

   ii. Increase the limit for resident corporations with domestic ringgit borrowing to invest in foreign currency assets up to MYR50 million per calendar year from the previous limit of MYR10 million.

d. Increase the limit for resident institutional investors to invest in foreign currency assets as follows:

   i. Unit trust companies: up to 50% of net asset value (NAV) attributable to residents from the previous 30% of NAV.

   ii. Fund management companies: up to 50% of funds of resident clients with domestic credit facilities from the previous 30% level.

   iii. Insurance companies and takaful operators: up to 50% of NAV of investment-linked funds marketed from the previous 30% of NAV.

e. Allow resident and non-resident corporations to utilise proceeds from the listing of shares through Initial Public Offering on the Main Board of Bursa Malaysia abroad.

f. Allow resident corporations to lend the foreign currency proceeds from their listing of shares on foreign stock exchanges to other resident corporations within the same corporate group in Malaysia.

g. Abolish restrictions on payments in foreign currency between residents for settlement of foreign currency financial products offered onshore.

h. Allow residents to open and maintain joint foreign currency accounts for any purpose. Previously, resident individuals were allowed to maintain joint foreign currency accounts only for purposes of education and employment overseas.

Detailed information on the foreign exchange administration rules can be obtained at http://www.bnm.gov.my/fxadmin

Attachment 1

Foreign Exchange Administration Policies Liberalised with effect from 1 April 2007

1. Facilitating the development of the domestic financial market

Policies	Prior to 1 April 2007	With effect from 1 April 2007
Net open position limit on a licensed onshore bank	Net open position of a licensed onshore bank was capped at 20% of the bank's capital base	The net open position limit of licensed onshore banks is abolished
Limit imposed on a licensed onshore bank for foreign currency accounts maintained by residents	A licensed onshore bank was granted specific aggregate overnight limit for foreign currency accounts maintained by residents	The overnight limit of licensed onshore banks for foreign currency accounts maintained by residents is abolished
Dealing in foreign currency by an investment bank	Specific approval was granted for investment bank for limited scope of foreign currency business	Expand the scope of foreign currency business of the investment bank subject to supervisory review on the capacity and capability of investment banks

2. Facilitating investments in ringgit assets by non-residents to promote Malaysia as an investment destination

Policies	Prior to 1 April 2007	With effect from 1 April 2007
Ringgit overdraft facility obtained by a non-resident stockbroking company and custodian bank from a licensed onshore banks	Non-resident stockbroking company and custodian bank were allowed to obtain ringgit overdraft facilities to avoid failure in ringgit asset trade settlement due to inadvertent delays: • Up to MYR200 million up to two working days with no rollover option; and • Utilisation only for shares traded on Bursa Malaysia	Ringgit overdraft facility to non-resident stock-broking company and custodian bank for the same purpose liberalised as follows: • No limit on amount, up to two working days with no rollover option; and • Utilisation extended also to ringgit instruments settled through RENTAS and Bursa Malaysia
Ringgit property loans obtained by a non-resident from residents to finance the purchase or construction of residential and commercial properties in Malaysia	A non-resident was allowed to obtained only up to three credit facilities from residents to finance the purchase or construction of residential or commercial properties in Malaysia	A non-resident is free to obtain any number of credit facilities from residents to finance the purchase or construction of residential and commercial properties in Malaysia

Policies	Prior to 1 April 2007	With effect from 1 April 2007
Appointment of an overseas branch within the same banking group as a vehicle to facilitate settlement of investment in ringgit assets by non-resident investors	Settlement of investment in ringgit assets undertaken through onshore financial institutions	A licensed onshore bank is allowed to appoint its overseas branch of the same banking group to facilitate the settlement of ringgit assets for non-resident investors with firm underlying investment commitment.
Transaction in ringgit financial products by a Labuan offshore bank	A Labuan offshore bank was allowed to transact in ringgit financial product only for its own account	A Labuan offshore bank is allowed to transact in ringgit financial products for its own account as well as on behalf of non-resident clients

3. Enhancing business efficiency and facilitate development of the capital market

Policies	Prior to 1 April 2007	With effect from 1 April 2007
Foreign currency borrowing by a resident corporation	A resident corporation was allowed to obtain foreign currency borrowing up to RM50 million equivalent in aggregate on a corporate group basis	The limit of foreign currency borrowing by a resident corporation is increased to RM100 million in aggregate on a corporate group basis

Policies	Prior to 1 April 2007	With effect from 1 April 2007
Hedging of foreign currency loan repayments by a resident	A resident was allowed to hedge foreign currency loan repayments only up to 24 months' commitment	A resident is allowed to hedge foreign currency loan repayments up to full commitment of the loans
Investment in foreign currency assets by a resident individual, corporation and an institutional investor	General permission was granted up to the following limits: **Resident individual with domestic ringgit borrowing** Up to RM100,000 equivalent in aggregate per calendar year **Resident corporation with domestic ringgit borrowing** Up to RM10 million equivalent in aggregate per calendar year **Unit trust company** Up to 30% NAV of funds attributable to residents **Fund management company** Up to 30% of funds belonging to residents with domestic ringgit borrowing **Resident insurance company and takaful operator** Up to 30% NAV of investment- linked funds marketed	The limits for residents to invest in foreign currency assets are increased to the following: **Resident individual with domestic ringgit borrowing** Up to RM1 million equivalent in aggregate per calendar year **Resident corporation with domestic ringgit borrowing** Up to RM50 million equivalent in aggregate per calendar year **Unit trust company** Up to 50% NAV of funds attributable to residents **Fund management company** Up to 50% of funds belonging to residents with domestic ringgit borrowing **Resident insurance company and takaful operator** Up to 50% NAV of investment- linked funds marketed

Policies	Prior to 1 April 2007	With effect from 1 April 2007
Utilisation of funds abroad arising from the listing of shares on Bursa Malaysia by: i. resident corporations ii. non-resident corporations	Subject to general investment abroad rules	Resident and non-resident corporations listing shares through Initial Public Offering on the Main Board of Bursa Malaysia are allowed to utilise any amount of the proceeds abroad.
Lending in foreign currency between residents	Lending and borrowing in foreign currency between residents require prior permission of the Controller of Foreign Exchange	A resident company is allowed to lend the foreign currency proceeds from the listing of shares on foreign stock exchanges to another resident company within the same corporate group in Malaysia
Payments in foreign currency between residents	Payments in foreign currency between residents require prior permission of the Controller of Foreign Exchange	Payments in foreign currency between residents are allowed for settlement of foreign currency financial products offered onshore
Joint foreign currency accounts between resident individuals	Joint foreign currency accounts between resident individuals were only allowed for overseas education and employment purposes	Joint foreign currency accounts between resident individuals are allowed for any purposes

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PART II

INVESTMENT REVIEW

7

MIDA (MALAYSIAN INDUSTRIAL DEVELOPMENT AUTHORITY) INVESTMENT POLICY AND INCENTIVES

A Approval of Manufacturing Projects & Incorporating a Company

1.0 APPROVAL OF MANUFACTURING PROJECTS

1.1 The Industrial Co-ordination 1975

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

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

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

The ICA defines:

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

- Balance of share premium account shall not include any amount credited therein at the instance of issuing bonus shares at premium out of capital reserve by revaluation of fixed assets.

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

This includes travelling sales, engineering, maintenance and repair personnel who are paid by and are under the control of the establishment.

It also includes directors of incorporated enterprises except those paid solely for their attendance at board of directors meetings. The definition encompasses family workers who receive regular salaries or allowances and who contribute to the Employees Provident Fund (EPF) or other superannuation funds.

1.2 Guidelines for Approval of Industrial Projects

Malaysia's industrial growth has been rapid over the last decade. This has created a high demand for labour in the manufacturing sector which, in turn, has caused a tightening in the labour market situation.

In view of this, the government's guidelines for approval of industrial projects in Malaysia are based on the Capital Investment Per Employee (C/E) Ratio. Projects with a C/E Ratio of less than RM55,000 are categorised as labour-intensive and thus will not qualify for a manufacturing licence or for tax incentives. Nevertheless, a project will be exempted from the above guidelines if it fulfils one of the following criteria:

- The value-added is 30% or more
- The Managerial, Technical and Supervisory (MTS) Index is 15% or more
- The project undertakes promoted activities or products as listed in the List of Promoted Activities/ Products - High Technology Companies
- It is located in the Eastern Corridor of Peninsular Malaysia (the states of Kelantan, Terengganu, Pahang and the district of Mersing in Johor), Sabah and Sarawak.

1.3 Expansion of Production Capacity and Product Diversification

A licensed company which desires to expand its production capacity or to diversify its product range by manufacturing additional products will need to apply to MIDA.

2.0 INCORPORATING A COMPANY

2.1 Methods of Conducting Business in Malaysia

In Malaysia, a business may be conducted:

i. By an individual operating as a sole proprietor, or

ii. By two or more (but not more than 20) persons in partnership, or

iii. By a locally incorporated company or by a foreign company registered under the provisions of the Companies Act 1965.

All sole proprietorships and partnerships must be registered with the Companies Commission of Malaysia (CCM) under the Registration of Businesses Ordinance 1956. In the case of partnerships, partners are both jointly and severally liable for the debts and obligations of the partnership should its assets be insufficient. Formal partnership deeds may be drawn up governing the rights and obligations of each partner but this is not obligatory.

2.1.1 Company Structure

The Companies Act 1965 governs all companies in Malaysia. The Act stipulates that a person must register a company with the CCM in order to engage in any business activity. It provides for three types of companies:

i. A company limited by shares where the personal liability of its members is limited to the par value of their shares, the number of shares taken or agreed to be taken by them.

ii. A company limited by guarantee where the members guarantee to meet liability up to an amount nominated in the Memorandum and Articles of Association in event of the company is being wound up.

iii. An unlimited company where there is no limit to the members' liability.

2.1.2 Company Limited by Shares

The most common company structure in Malaysia is a company limited by shares. Such limited companies may be either private (Sendirian Berhad or Sdn. Bhd.) or public (Berhad or Bhd.) companies.

Private Companies

A company having a share capital may be incorporated as a private company if its Memorandum and Articles of Association:

i. Restricts the right to transfer its shares;

ii. Limits the number of its members to 50, excluding employees and some former employees;

iii. Prohibits any invitation to the public to subscribe for its shares and debentures;

iv. Prohibits any invitation to the public to deposit money with the company.

Public Companies

A public company can be formed or, alternatively, a company can be converted to a public company subject to Section 26 of the Companies Act 1965. Such a company can offer shares to the public provided:

i. It has registered a prospectus with the Securities Commission

ii. It has lodged a copy of the prospectus with the CCM on or before the date its issue.

A public company can apply to have its shares quoted on Bursa Malaysia subject to compliance with the requirements laid down by the exchange. Any subsequent issue of securities (e.g. issue by way of a rights or bonus, or issue arising from an acquisition, etc.) requires the approval of the Securities Commission.

2.2 Procedure for Incorporation

To incorporate a company, a person must apply to the CCM using Form 13A together with a payment of RM30 in order to determine if the proposed name of the intended company is available. If it is, the application will be approved and the proposed name reserved for the applicant for three months.

A person must then lodge the following documents with the CCM within the three months to secure the use of the proposed name:

i. Memorandum and Articles of Association

ii. Declaration of Compliance (Form 6)

iii. Statutory declaration by a person before appointment as a director, or by a promoter before incorporation of a company (Form 48A)

The Memorandum of Association documents the company's name, the objects, the amount of authorised capital (if any) proposed for registration and its division into shares of a fixed amount.

The Articles of Association describes the regulations governing the internal management of the affairs of the company and the conduct of its business.

Once the Certificate of Incorporation is issued, the subscribers to the Memorandum together with such other persons as may from time to time become members of the company shall be a body corporate, capable of exercising the functions of an incorporated company and of suing and being sued. It has a perpetual succession under common seal with power to hold land but with such liability on the part of the members to contribute to the assets of the company in the event of it being wound up, as is provided for in the Companies Act.

2.2.1 Requirements of a Locally Incorporated Company

A company must maintain a registered office in Malaysia where all books and documents required under the provisions of the Act are kept. The name of the company shall appear in legible romanised letters, together with the company number, on its seal and documents.

A company cannot deal with its own shares or hold shares in its holding company. Each equity share of a public company carries only one vote at a poll at any general meeting of the company. A private company may, however, provide for varying voting rights for its shareholders.

The secretary of a company must be a natural person of full age who has his principal or only place of residence in Malaysia. He must be a member of a prescribed body or

is licensed by the Registrar of Companies. The company must also appoint an approved company auditor to be the company auditor in Malaysia.

In addition, the company shall have a least two directors who each has his principal or only place of residence within Malaysia. Directors of public companies or subsidiaries of public companies must not normally be over 70 years of age. It is not incumbent that a company director also be a shareholder.

2.3 Registration for Foreign Companies

A foreign company desiring to conduct business or establish a place for one in Malaysia must register with the CCM. The same registration procedure applies whereby an application must be submitted on Form 13A to the CCM in Kuala Lumpur or any of its branch offices in Malaysia, with a payment of RM30. If the intended name of the foreign company is available, the application will be approved and the name reserved for three months.

Upon approval, applicants must lodge the following documents with the CCM:

i. A certified copy of its Certificate of Incorporation (or a document of similar effect) from the country of origin

ii. A certified copy of its Charter, Statute on Memorandum and Articles of Association or other instrument constituting or defining its constitution

iii. A list of its directors and certain statutory particulars regarding them (Form 79)

iv. Where there are local directors, a memorandum stating the powers of those directors

v. A memorandum of appointment or power of attorney authorising one or more persons resident in Malaysia to accept on behalf of the company, service of process and any notices required to be served on the company

vi. A statutory declaration in the prescribed form made by the agent of the company (From 80)

The appointed agent undertakes all acts required to be done by the company under the Companies Act 1965. Any change in agents must be reported to the CCM.

Every foreign company shall, within a month of establishing a place of business or commencing business within Malaysia, lodge with the CCM for registration, notice of the situation of its registered office in Malaysia using the prescribed form.

A foreign incorporated company must file a copy of the Annual Return within one month of its annual general meeting. Within two months of its annual general meeting, the company must file a copy of the balance sheet of the head office, a duly audited statement of assets used in and liabilities arising out of its operations in Malaysia, and a duly audited profit and loss account.

B Guidelines on Equity Policy

1.0 EQUITY POLICY IN THE MANUFACTURING SECTOR

Malaysia has always welcomed investments in its manufacturing sector. Desirous of increasing local participation in this activity, the government encourages joint-ventures between Malaysian and foreign investors.

1.1 Equity Policy for New, Expansion or Diversification Projects

The level of exports had been used to determine foreign equity participation in manufacturing projects. However, since 31 July 1998, the Malaysian government had relaxed the equity policy guidelines for all applications for investments in new as well as expansion/diversification projects in the manufacturing sector. Under this relaxation, foreign investors could hold 100% equity irrespective level of exports.

However, this relaxation only applies to all applications that were received by 31 December 2003. In addition, it did not apply to specific activities and products where Malaysian companies have the capabilities and expertise. These activities and products are paper packaging, plastic packaging (bottles, films, sheets and bags), plastic injection moulded components, metal stamping and metal fabrication, wire harness, printing and steel service centres. In these cases, specific equity guidelines prevail.

To further enhance Malaysia's investment climate, equity holdings in all manufacturing projects were fully liberalised effective from 17 June 2003. Foreign investors can now hold 100% of the equity in all investments in new projects, as well as investments in expansion/diversification projects by existing companies, irrespective of the level of exports and without any product/activity being excluded.

The new equity policy also applies to:

i. Companies previously exempted from obtaining a manufacturing licence but whose shareholders' funds have now reached RM2.5 million or have engaged 75 or more full-time employees and are thus required to be licensed.

ii. Existing licensed companies previously exempted from complying with equity conditions, but are now required to comply due to their shareholders' funds having reached RM2.5 million.

1.2 Equity Policy Applicable to Existing Companies

Equity and export conditions imposed on companies prior to 17 June 2003 will be maintained.

However, companies can request for these condition to be removed. The government will be flexible in considering such requests and approval will be given based on the merits of each case. Companies with export conditions can apply for approval from MIDA to sell in the domestic market based on the following guidelines:

- Up to 100% of their output for those products with nil duty or not produced locally.
- Up to 80% of their output if the domestic supply is inadequate; or there has been an increase in imports from ASEAN for products with Common Effective Preferential Tariff (CEPT) duties of 5% and below.

2.0 PROTECTION OF FOREIGN INVESTMENT

Malaysia's commitment in creating a safe investment environment has persuaded more than 4,000 international companies from over 50 countries to make Malaysia their offshore base.

2.1 Equity Ownership

A company whose equity participation has been approved will not be required to restructure its equity at any time as long as the company continues to comply with the original approval and retains the original features of the project.

2.2 Investment Guarantee Agreements

Malaysia's readiness to conclude Investment Guarantee Agreements (IGAs) is a testimony of the government's desire to increase foreign investor confidence in Malaysia, IGAs will:

- Protect against nationalisation and expropriation.
- Ensure prompt and adequate compensation in the event of nationalisation or expropriation.
- Provide free transfer of profits, capital and other fees.
- Ensure settlement of investment disputes under the Convention on the Settlement of Investment Disputes of which Malaysia has been a member since 1966.

Malaysia has concluded Investment Guarantee Agreements with the following groupings and countries (in alphabetical order):

Groupings:

- Association of South-East Asian Nations (ASEAN)
- Organisation of Islamic Countries (OIC)

Countries:

Albania
Algeria
Argentina
Austria
Bahrain
Bangladesh
Belgo-Luxembourg
Bosnia Herzegovina
Botswana
Burkina Faso
Cambodia
Canada
Chile
Croatia
Cuba
Czech Republic
Denmark
Djibouti
Egypt
Ethiopia
Finland
France
Germany
Ghana
Guinea
Hungary
India
Indonesia
Iran
Italy
Jordan
Kazakhstan
Korea, North
Korea, South
Kuwait
Kyrgyz Republic
Laos
Lebanon
Macedonia
Malawi
Mongolia
Morocco
Netherlands
Norway
Pakistan
Papua New Guinea
Peru
Poland
Romania
Saudi Arabia
Senegal
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Taiwan
Turkey
Turkmenistan
United Arab Emirates
United Kingdom
United States of America
Uruguay
Uzbekistan
Yemen
Zimbabwe

2.3 Convention on the Settlement of Investment Disputes

In the interest of promoting and protecting foreign investment, the Malaysian government ratified the provisions of the Convention on the Settlement of Investment Disputes in 1966. The Convention, established under the auspices of the International Bank for Reconstruction and Development (IBRD), provides for international conciliation or arbitration through the International Centre for Settlement of Investment Disputes located at IBRD's principal office in Washington.

2.4 Kuala Lumpur Regional Centre for Arbitration

The Kuala Lumpur Regional Centre for Arbitration was established in 1978 under the auspices of the Asian-African Legal Consultative Committee (AALCC) - an inter-governmental organisation in cooperation with and assisted by the Malaysian government.

A non-profit organisation, the Centre serves the Asia Pacific region. It aims to provide a system to settle disputes for the benefit of parties engaged in trade and commerce and investments with and within the region.

Any dispute, controversy or claim arising out of or relating to a contract, or the breach, termination or invalidity shall be decided by arbitration in accordance with the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration.

C Incentives for Investment

In Malaysia, tax incentives, both direct and indirect, are provided for in the Promotion of Investments Act 1986, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 1972, Excise Act 1976 and Free Zones Act 1990. These Acts cover investments in the manufacturing, agriculture, tourism (including hotel) and approved services sectors as well as R&D, training and environmental protection activities.

The direct tax incentives grant partial or total relief from income tax payment for a specified period, while indirect tax incentives come in the form of exemptions from import duty, sales tax and excise duty.

1.0 INCENTIVES FOR THE MANUFACTURING SECTOR

1.1 Main Incentives for Manufacturing Companies

The major tax incentives for companies investing in the manufacturing sector are the Pioneer Status or Investment Tax Allowance.

Eligibility for Pioneer Status or Investment Tax Allowance is based on certain priorities, including the levels of value-added, technology used and industrial linkages. Such eligible projects are termed as "promoted activities" or "promoted products" (Please refer to the List of Promoted Activities and Products - General)

1.1.1 Pioneer Status

A company granted Pioneer Status enjoys a 5-year partial exemption from the payment of income tax. It pays tax on 30% of its statutory income*, with the exemption period commencing from its Production Day (defined as the day its production level reaches 30% of its capacity).

To encourage investment in the promoted areas i.e. the States of Sabah and Sarawak and the designated " Eastern Corridor"+ of Peninsula Malaysia, applications received from 13 September 2003 from companies located in these areas will enjoy a 100% tax exemption on the statutory income during their 5-year exemption period. Companies which have been granted approval for this incentive

but have not commenced commercial production, or applications under consideration, are also eligible. All project applications received by 31 December 2005 will be eligible for this enhanced incentive.

Applications for Pioneer Status should be submitted to the Malaysian Industrial Development Authority (MIDA).

1.1.2 Investment Tax Allowance (ITA)

As an alternative to Pioneer Status, a company may apply for Investment Tax Allowance (ITA). A company granted ITA gets an allowance of 60% of qualifying capital expenditure (such as factory, plant, machinery or other equipment used for the approved project) incurred within five years from the date on which the first qualifying capital expenditure is incurred.

The company can offset this allowance against 70% of its statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised. The remaining 30% of statutory income will be taxed at the prevailing company tax rate.

To encourage investment in the promoted areas i.e. the States of Perlis**, Sabah and Sarawak and the designated " Eastern Corridor"+ of Peninsula Malaysia, applications received from 13 September 2003 from companies located in these areas will enjoy an allowance of 100% on the qualifying capital expenditure incurred within a period of five year. The allowance can be utilised to offset against 100% of the statutory income for each 5-year of assessment. Companies which have been granted approval for this incentive one year prior to 13 September 2003 but have not commenced commercial production, or applications under consideration, are also eligible. All project applications received by 31 December 2010 will be eligible for this enhanced incentive.

Applications should be submitted to MIDA.

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* *Statutory Income is derived after deducting revenue expenditure and capital allowances from the gross income.*

\+ *The "Eastern Corridor" of Peninsular Malaysia cover the States of Kelantan, Terengganu and Pahang, and the district of Mersing in the State of Johor.*

** *The State of Perlis has been declared as one of the promoted areas effective from 2 September 2006 and companies undertaking promoted activities or manufacture products in this state will be eligible for incentives presently given to such areas.*

1.2 Incentives for Relocating Manufacturing Activities to Promoted Areas

In order to reduce the costs of doing business and to provide a competitive business environment, existing companies which relocate their manufacturing activities to the promoted areas, are eligible for a second round of the following incentives:

i. Pioneer Status with tax exemption of 100% of statutory income for a period of 5 years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

ii. Investment Tax Allowance of 100% of the qualifying capital expenditure incurred within a period of 5 years. The allowance can be utilised to offset against 100% of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised.

Applications should be submitted to MIDA.

1.3 Incentives for High Technology Companies

A high technology company is a company engaged in promoted activities or in the production of promoted products in areas of new and emerging technologies (Please refer to the List of Promoted Activities and Products - High Technology Companies). A high technology company qualifies for:

i. Pioneer Status with tax exemption of 100% of statutory income for a period of 5 years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

ii. Investment Tax Allowance of 60% (100% for promoted areas) on the qualifying capital expenditure incurred within five years from the date the first qualifying capital expenditure is incurred. The allowance can be utilised to offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried

forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

The high technology company must fulfil the following criteria:

i. The percentage of local R&D expenditure to gross sales should be at least 1% on an annual basis. The company has three years from its date of operation or commencement of business to comply with this requirement.

ii. Scientific and technical staff with degrees/diplomas and a minimum of five years experience in related fields should comprise at least 7% of the company's total workforce.

1.4 Incentives For Strategic Projects

Strategic projects involve products or activities of national importance. They generally involve heavy capital investments with long gestation periods, have high levels of technology, and are integrated, generate extensive linkages, and have significant impact on the economy. Such projects qualify for:

i. Pioneer Status with a tax exemption of 100% of the statutory income for a period of 10 years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

ii. Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within five years from the date the first qualifying capital expenditure is incurred. This allowance can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

1.5 Incentives for Small and Medium-Scale Companies

Previously, small and medium-scale companies with a paid-up capital of RM2.5 million and below are eligible for a reduced corporate tax of 20% on the chargeable income of up to

RM100,000. The tax rate on the remaining chargeable income is maintained at 28%. Dividends distributed will be given a tax credit of 20% in the hands of the shareholders.

However, effective from the year of assessment 2007, the corporate tax rate has been reduced to 27% and this reduction is also extended to SMEs.

Small-scale manufacturing companies incorporated in Malaysia with shareholders' funds not exceeding RM500,000 and having at least 60% Malaysian equity are eligible for the following incentives:

i. Pioneer Status with an income tax exemption of 100% of the statutory income for a period of five years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

ii. Investment Tax Allowance of 60% (100% for promoted areas) on the qualifying capital expenditure incurred within five years. This allowance can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until the whole amount has been fully utilised.

A sole proprietorship or partnership is eligible to apply for this incentive provided a new private limited/limited company is formed to take over the existing production/activities.

To qualify for the incentive, a small-scale company has to comply with any one of the following criteria:

i. The value added must be at least 15%; or

ii. The project contributes towards the socio-economic development of the rural population.

The company shall carry out the manufacturing of products or participate in activities listed as promoted products and activitied for small-scale companies (Please refer to the list of Promoted Activities and Products - Small Scale Companies).

Applications should be submitted to MIDA.

1.6 Incentives to Strengthen Industrial Linkages

To encourage large companies to participate in an Industrial Linkage Programme (ILP), expenditure incurred in the training of employees, product development and testing, and factory auditing to ensure the quality of vendors' products, will be allowed as a deduction in the computation of income tax.

Vendors, including small and medium-scale companies that propose to manufacture promoted products or participate in promoted activities in an ILP (Please refer to the List of Promoted Activities and Products - Industrial Linkage Programme (ILP)) are eligible for the following incentives:

i. Pioneer Status with a tax exemption of 100% of the statutory income for a period of five years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product ; or

ii Investment Tax Allowance of 60% (100% for promoted areas) on the qualifying capital expenditure incurred within five years from the date the first qualifying capital expenditure is incurred. This allowance can be offset against 100% of its statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

To encourage vendors to manufacturing promoted products or participate in activities for the international market, vendors in an approved ILP who are capable of achieving world-class standards in terms of price, quality and capacity, will be eligible for the following incentives:

i. Pioneer Status with a tax exemption of 100% of the statutory income for a period of 10 years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

ii. Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of five years which the company can offset against 100% of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

1.7 Incentives for the Machinery and Equipment Industry

1.7.1 Incentives for the Production of Specialised Machinery and Equipment

Companies undertaking activites in the production of specialised machinery and equipment, namely, machine tools, plastic injection machines, plastic extrusion machinery, material handling equipment, packaging machinery, robotics and factory automation equipment, specialised / process machinery or equipment for specific industries, and parts and components of the mentioned machinery and equipment are eligible for:

i. Pioneer Status with a tax exemption of 100% of the statutory income for a period of ten years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

ii. Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within five years from the date on which the first qualifying capital expenditure is incurred. This allowance can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

1.7.2 Additional Incentives for the Production of Heavy Machinery

Applications received from existing locally-owned companies that reinvest in the production of heavy machinery such as cranes, quarry machinery, batching plant and port material handling equipment, are eligible for the following incentives:

i. Pioneer Status with a tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from the reinvestment for a period of five years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

ii. Investment Tax Allowance of 60% (100% for promoted areas) on the additional qualifying capital expenditure incurred within a period of five years. The allowance can be offset against 70% (100% for promoted areas) of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

1.7.3 Additional Incentives for the Production of Machinery and Equipment

Applications received from existing locally-owned companies that reinvest in the production of machinery and equipment, including specialised machinery and equipment and machine tools, are eligible for the following incentives:

i. Pioneer Status with a tax exemption of 70% (100% for promoted areas) on the increased statutory income arising from the reinvestment for a period of five years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed

to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

ii. Investment Tax Allowance of 60% (100% for promoted areas) on the additional qualifying capital expenditure incurred within a period of five years. The allowance can be offset against 70% (100% for promoted areas) of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

1.8 Incentives for Automotive Component Modules

New and existing companies that undertake design, R&D and production of qualifying automotive component modules or systems are eligible for:

i. Pioneer Status with a tax exemption of 100% of the statutory income for a period of five years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

ii. Investment Tax Allowance of 60% (100% for promoted areas) on the qualifying capital expenditure incurred within five years from the date the first capital expenditure is incurred. The allowance can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until the whole amount has been fully utilised.

The qualifying modules or systems are front corner modules, rear corner modules, instrument panel modules, struts and absorber and spring assembly modules, bumper modules, front cross member modules, function integrated door modules, fuel tank modules, seat modules, pedal modules, door trim modules, floor console modules, tyre and wheel modules, brake systems, wiper systems, exhaust systems, audio systems, heater ventilation air-conditioning systems, air bag systems,

power and signal distribution systems, alarm systems, seat belt systems, exterior lighting systems, body in white modules, engine management systems, safety systems, telematics, navigational systems, engine fuel injection systems, and vehicle intelligence systems.

This incentive is for applications received by MIDA from 21 September 2002.

1.9 Enhanced Incentives for the Utilisation of Oil Palm Biomass

Applications received from companies that utilise oil palm biomass to produce value-added products such as particleboard, medium density fibreboard, plywood, pulp and paper are eligible for the following incentives:

(i) New Companies

a. Pioneer Status with a tax exemption of 100% of the statutory income for a period of 10 years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

b. Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of five years. The allowance can be used to offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until the whole amount has been fully utilised.

(ii) Existing Companies that Reinvest

a. Pioneer Status with a tax exemption of 100% on the increased statutory income arising from the reinvestment for a period of 10 years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

b. Investment Tax Allowance of 100% on the additional qualifying capital expenditure incurred within a period of five years. The allowance can be used to offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until the whole amount has been fully utilised.

1.10 Additional Incentives for the Manufacturing Sector

1.10.1 Reinvestment Allowance (RA).

A manufacturing company that has been in operation for at least 12 months and incurs qualifying capital expenditure to expand, modernise or automate its existing business or diversify its existing business into related products within the same industry can apply for Reinvestment Allowance (RA).

The RA is given at the rate of 60% on the qualifying capital expenditure incurred by the company, and can be offset against 70% of its statutory income for the year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised.

A company can offset the RA against 100% of its statutory income for the year of assessment if:

– The company undertakes reinvestment projects in the promoted areas, i.e the states of Perlis, Sabah, Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia; or

– The company attains a productivity level exceeding the level determined by the Ministry of Finance. For further details on the prescribed productivity level for each sub-sector, please contact the Inland Revenue Board. (see Useful Addresses - Relevant Organisations)

The RA will be given for a period of 15 consecutive years beginning from the year the first reinvestment is made. Companies can only claim upon completion of the qualifying project, ie. after the building is completed or when the plant/machinery is put to operational use. Assets acquired for the reinvestment cannot be disposed of within a period of two years from the time of the reinvestment.

A company that intends to reinvest before the expiry of its Pioneer Status can surrender its Pioneer Status for purpose of cancellation and be eligible for RA.

Applications for RA should be submitted to the Inland Revenue Board (IRB), while applications for the surrender of Pioneer Status for RA should be submitted to MIDA.

1.10.2 Accelerated Capital Allowance (ACA)

After the 15-year period of eligibility for Reinvestment Allowance (RA), companies that reinvest in the manufacture of promoted products are eligible to apply for Accelerated Capital Allowance (ACA). The ACA on capital expenditure is to be utilised within three years, i.e. an initial allowance of 40% and an annual allowance of 20%.

Applications should be submitted to the IRB accompanied by a letter from MIDA certifying that the companies are manufacturing promoted products.

1.10.3 Accelerated Capital Allowance on Equipment to Maintain Quality of Power Supply

In order to reduce the cost of doing business caused by interruptions in the power supply, companies which incur capital expenses on equipment to ensure the quality of power supply, are eligible for Accelerated Capital Allowance for a period of 2 years.

This incentive is effective from the year of assessment 2005.

Applications should be submitted to the IRB.

1.10.4 Incentive for Industrialised Building System

Industrial Building System (IBS) will enhance the quality of construction, create a safer and cleaner working environment as well as reduce the dependence on foreign workers. Companies which incur expenses on the purchase of moulds used in the production of IBS components are eligible for Accelerated Capital Allowances (ACA) for a period of 3 years.

This incentive is effective from the year of assessment 2006.

1.10.5 Tax Exemption on the Value of Increased Exports

To promote exports, manufacturing companies in Malaysia qualify for:

– A tax exemption on statutory income equivalent to 10% of the value of increased exports, provided that the goods exported attain at least 30% value added; or

– A tax exemption on statutory income equivalent to 15% of the value of increased exports, provided that the goods exported attain at least 50% value added.

Claims should be submitted to the IRB.

To further encourage the export of Malaysian goods, a locally-owned manufacturing company with Malaysian equity of at least 60% is eligible for:

– A tax exemption on statutory income equivalent to 30% of the value of increased exports, provided the company achieves a significant increase in exports;

– A tax exemption on statutory income equivalent to 50% of the value of increased exports, provided the company succeeds in penetrating new markets;

– A full tax exemption on the value of increased exports, provided the company achieves the highest increase in export in its category.

1.10.6 Group Relief

To enhance private sector investment, group relief is provided under the Income Tax Act 1967 to all locally incorporated resident companies. The group relief is limited to 50% of the current year's unabsorbed losses to be offset against the income of another company within the same group (including new companies undertaking activities in approved food production, forest plantation, biotechnology, nanotechnology, optics and photonics) subject to the following conditions:

a. The claimant and the surrendering companies each has a paid-up capital of ordinary shares exceeding RM2.5 million;

b. Both the claimant and the surrendering companies must have the same accounting period;

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

d. The 70% shareholding must be on a continuous basis during the preceding year and the relevant year;

e. Losses resulting from the acquisition of proprietary rights or a foreign-owned company should be disregarded for the purpose of group relief; and

f. Companies currently enjoying the following incentives are not eligible for group relief:

- Pioneer Status
- Investment Tax Allowance/Investment Allowance
- Reinvestment Allowance
- Exemption on shipping profits
- Exemption of income tax under section 127 of the Income Tax Act 1967; and
- Incentive Investment Company

With the introduction of the above incentive, the existing group relief incentive for approved food production, forest plantation, biotechnology, nanotechnology, optics and photonics will be discontinued. However, companies granted group relief incentive for the above activities shall continue to offset their income against 100% of the losses incurred by their subsidiaries.

This incentive is effective from the year of assessment 2006.

2.0 INCENTIVES FOR THE AGRICULTURE SECTOR

The Promotion of Investments Act 1986 states that the term "company" in relation to agriculture includes:

- Agro-based cooperative societies and associations
- Sole proprietorships and partnerships engaged in agriculture.

Companies producing promoted products or engaged in promoted activities (Please refer to the List of Promoted Activities and Products - General) in the agricultural sector qualify for the following incentives.

2.1 Main Incentives for the Agricultural Sector

2.1.1 Pioneer Status

As in the manufacturing sector, companies producing promoted products or engaged in promoted activities are eligible for Pioneer Status.

A Pioneer Status company enjoys a partial exemption from income tax. It pays tax on 30% of its statutory income for five years, commencing from its Production Day (defined as the day of first sale of the agriculture produce).

Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product.

Applications received from companies located in the promoted areas i.e. the States of Perlis, Sabah and Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia, will enjoy a 100% tax exemption on their statutory income during their 5-year exemption period. All project applications received by 31 December 2010 will be eligible for this enhanced incentive.

Applications should be submitted to MIDA.

2.1.2 Investment Tax Allowance (ITA)

As an alternative to Pioneer Status, companies producing promoted products or engaged in promoted activities can apply for ITA. A company granted ITA gets an allowance of 60% of qualifying capital expenditure incurred within five years from the date on which the first qualifying capital expenditure is incurred.

Companies can offset this allowance against 70% of their statutory income in the year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised. The remaining 30% of statutory income will be taxed at the prevailing company tax rate.

Applications received from companies located in the promoted areas i.e. the states of Perlis, Sabah and Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia, will enjoy an allowance of 100% on the qualifying capital expenditure incurred within a period five years. The allowance can be utilised to offset against 100% of the statutory income for each year of assessment. Companies which have been granted approval for this incentive but have not commenced commercial production, or applications under consideration, are also eligible. All project applications received by 31 December 2005 will be eligible for this enhanced incentive.

To increase the benefits to agricultural projects, the government has broadened the definition of qualifying capital expenditure to include expenditure incurred on:

– Clearing and preparation of land

– Planting crops

– Provision of plant and machinery used in Malaysia for the purpose of crop cultivation, animal farming, aquaculture, inland fishing or deep-sea fishing and other agricultural or pastoral pursuits

– Construction of access roads including bridges, constructing or purchase of buildings (including those provided for the welfare of people or as living accommodation) and structural improvements on land or other structures which are used for crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits.

  Such roads, bridges, buildings structural improvements on land and other structures should be on land forming part of the land used for the purpose of such crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits.

In view of the time lag between start-up and processing of the produce, integrated agricultural projects qualify for ITA for an additional five years for expenditure incurred for processing or manufacturing operations.

Applications should be submitted to MIDA.

2.1.3 Incentives for Food Production

(a) Incentives for New Projects

To encourage food production, a company which invests in a subsidiary company engaged in food production, together with the subsidiary company qualify for either one of the following incentive packages:

Incentive Package A:

i. A company which takes up a 70% equity in another subsidiary company engaged in food production receives tax deduction equivalent to the amount of investment made in that subsidiary; and

ii. The subsidiary company enjoys full income tax exemption on its statutory income for 10 years commencing from the first year the company enjoys profits, in which:

- losses incurred before and during the exemption period can be brought forward after the exemption period of 10 years;
- dividends paid from the exempt income is exempted in the hands of the shareholders.

Incentive Package B:

i. A company which takes up 70% equity in a subsidiary company engaged in food production will be given group relief for the losses incurred by the subsidiary company before it records any profit, and

ii. The subsidiary company enjoys full income tax exemption on its statutory income for 10 years. This commences from the first year the company enjoys profits, in which:

- losses incurred during the exemption period can be carried forward after the exemption period of 10 years; and
- dividends paid from the exempt income is exempted in the hands of the shareholders.

The eligible food products are as approved by Minister of Finance. These include kenaf, deep-sea fishing, vegetables, fruits, herbs, spices, aquaculture and the rearing of cattle, goats and sheep.

The above equity condition for companies which invest in its subsidiaries is effective from 11 September 2004. Companies should commence food production within a period of one year from the date the incentive is approved. The incentive period for this scheme will be extended for applications received until 31 December 2010.

Applications should be submitted to the Ministry of Agriculture and Agro-based Industry.

(b) Incentives for Existing Companies which Reinvest

An existing company which that reinvests in the production of the above food products also qualifies for the same incentives for a period of five years.

The food production project for both new and existing companies should commence within a year from the date the incentive is approved. Applications should be submitted to the Ministry of Agriculture and Agro-based Industry by 31 December 2005.

(c) Tax Incentives for 'Halal' Food Production

To encourage new investments in 'halal' food production for the export market and to increase the use of modern and state of the art machinery and equipment in producing high quality 'halal' food that comply with the international standards, companies which invest in 'halal' food productions and have already obtained 'halal' certification from JAKIM and other quality certification are eligible for the Investment Tax Allowance of 100% of qualifying capital expenditure incurred within a period of 5 years.

This allowance can be utilised to offset against 100% of the statutory income in the year of assessment. Applications received from 11 September 2004 are eligible for this incentive.

Applications should be submitted to MIDA.

2.1.4 Incentives for Reinvestment in Food Processing Activities

A locally-owned manufaturing company with Malaysian equity of at least 60% that reinvests in promoted food processing activities is eligible for another round of Pioneer Status or Investment Tax Allowance (ITA) incentive. Activities located in the promoted areas, i.e. the States of Perlis, Sabah, Sarawak and the "Eastern Corridor" of Peninsular Malaysia, are eligible for the Pioneer Status and ITA incentives in accordance with that given to promoted areas.

This incentive is for applications received by MIDA from 21 September 2002.

2.2 Additional Incentives for the Agricultural Sector

2.2.1 Reinvestment Allowance

Persons or companies engaged for at least 12 months in the production of essential food such as rice, maize, vegetables, tubers, livestock, aquatic products, and any other activities approved by the Minister of Finance enjoy the Reinvestment Allowance (RA).

The qualifying capital expenditure includes expenditure incurred on:

- Clearing and preparation of land
- Planting of crops
- Provision of plant and machinery used in Malaysia for the purpose of crop cultivation, animal farming, aquaculture, inland fishing or deep-sea fishing, and other agricultural or pastoral pursuits
- Construction of access roads including bridges, construction or purchase of buildings (including those provided for the welfare of person or as living accommodation), and structural improvements on land or other structures which are used for crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits. Such roads, bridges, buildings, structural improvements on land and other structures should be on land forming part of the land used for the purpose of such crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits

The RA is in the form of an allowance of 60% of the qualifying capital expenditure incurred within a period of 15 years beginning from the year the first reinvestment is made. The allowance can be offset against 70% of the statutory income in the year of assessment. Untilised allowances can be carried forward to the following years until fully untilised.

Companies that undertake reinvestment projects in the promoted areas i.e. the states of Sabah, Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia can offset the allowance fully against their statutory income for that year of assessment.

Claims should be submitted to the IRB.

2.2.2 Reinvestment Incentives for Resource-Based Industries

This incentive is offered to companies that are at least 51% Malaysian-owned and are in the rubber, oil palm and wood-based industries producing products which have export potential. Companies in these industries reinvesting for expansion purposes are eligible for another round of Pioneer Status or Investment Tax Allowance (ITA). Activities located in the promoted areas i.e. the States of Perlis, Sabah, Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia are eligible for higher levels of exemption / allowance under Pioneer Status or ITA in accordance with that given for promoted areas.

Applications should be submitted to MIDA

2.2.3 Incentives for Modernising Chicken and Duck Rearing

To promote modernisation and the usage of environment-friendly practices in the agricultural sector, chicken and duck rearers who reinvest for the purpose of shifting from the opened house system to the closed house system will be eligible for Reinvestment Allowance for a period of 15 consecutive years commencing from the first year the reinvestment is made.

This incentive is given on condition the minimum rearing capacity of the closed house system is as follows:

- 20,000 broiler chickens/broiler ducks per cycle; or
- 50,000 layer chickens/layer ducks per cycle.
- 20,000 parent or grandparent stock of chicken/ ducks per cycle

The incentive for broiler chickens/broiler ducks and layer chickens/layer ducks is effective from the year of assessment 2003 while the incentive for parent/ grandparent stock of chicken/ducks is effective from the year of assessment 2005.

All projects must be approved by the Ministry of Agriculture and Agro-based Industry.

Claims should be submitted to the IRB.

2.2.4 Accelerated Capital Allowance (ACA)

Upon the expiry of Reinvestment Allowance (RA) companies that reinvest in promoted agricultural activities and food products are eligible to apply for Accelerated Capital Allowance (ACA). These activities include cultivation of rice, maize, vegetables, tubers, livestock, aquatic products and any other activities approved by the Minister of Finance.

The ACA on the capital expenditure is to be utilised within two years, i.e., an initial allowance of 20% in the first year and an annual allowance of 40%.

Claims should be submitted to the IRB, accompanied by a letter from MIDA certifying that the companies are undertaking promoted agricultural activities or producing promoted food products.

2.2.5 Agricultural Allowance

A person or a company carrying on an agricultural activity can claim capital allowances and special industrial building allowances under the Income Tax Act 1967 for certain capital expenditure. Capital expenditure which qualifies includes expenditure incurred on:.

- Clearing and preparation of land
- Planting of crops
- Providing of plant and machinery used in Malaysia for the purpose of crop cultivation, animal farming, aquaculture, inland fishing or deep-sea fishing, and other agricultural or pastoral pursuits
- Construction of access roads including bridges, construction or purchase of buildings (including those provided for the welfare of person or as living accommodation), and structural

improvements on land or other structures which are used for crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits. Such roads, bridges, buildings, structural improvements on land and other structures should be on land forming part of the land used for the purpose of such crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits

A company continues to get this allowance as long as the company incurs this expenditure, regardless of whether it already enjoys Pioneer Status or ITA.

Claims should be submitted to the IRB.

2.2.6 Accelerated Agriculture Allowance for the Planting of Rubberwood Trees

To ensure a regular supply of rubberwood for the furniture industry, a non-rubber plantation company that plants at least 10% of its plantation with rubberwood trees is eligible for the Accelerated Agriculture Allowance whereby the write-off period on the capital expenditure incurred for land preparation, planting and maintenance of rubberwood cultivation is accelerated from two years to one year.

This incentive is for project applications received by the Ministry of Plantation Industries and Commodities from 21 September 2002.

Applications should be submitted to the Ministry of Plantation Industries and Commodities.

2.2.7 100% Allowance on Capital Expenditure for Approved Agricultural Projects

Schedule 4A of the Income Tax Act 1967 provides a 100% allowance on capital expenditure for Approved Agricultural Projects as approved by the Minister of Finance. This covers qualifying capital expenditure incurred within a specific time frame for a farm that cultivates and utilises a specified minimum acreage as stipulated by the Minister of Finance.

Approved agricultural projects are cultivation of vegetables, fruits (papaya, banana, passion fruit, star fruit, guava and mangosteen), tubers, roots, herbs, spices, crops for

animal feed and hydroponic-based products, ornamental fish culture; fish and prawn rearing (pond culture, tank culture, marine cage culture, off-shore marine cage culture); cockles, oysters, mussels and seaweed culture; and shrimp, prawn and fish hatchery; and certain species of forest plantations.

The incentive enables a person carrying on such a project to elect to deduct the qualifying capital expenditure incurred in respect of that project from his aggregate income, including income from other sources. Where there is insufficient aggregate income, the unabsorbed expenditure can be carried forward to subsequent years of assessment. Where he so elects, he will not be entitled to any capital allowance or agricultural allowance on the same capital expenditure.

The qualifying capital expenditure eligible for deduction includes expenditure incurred on:

- Clearing and preparation of land
- Planting of crops
- Providing of plant and machinery used in Malaysia for the purpose of crop cultivation, animal farming, aquaculture, inland fishing or deep-sea fishing, and others agricultural or pastoral pursuits
- Construction of access roads including bridges, construction or purchase of buildings (including those provided for the welfare of person or as living accommodation), and structural improvements on land or other structures which are used for crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits. Such roads, bridges, buildings, structural improvements on land and other structures should be on land forming part of the land used for the purpose of such crop cultivation, animal farming, aquaculture, inland fishing and other agricultural or pastoral pursuits

This incentive is not available to companies which have been granted incentives under the Promotion of Investments Act 1986 and whose tax relief period have not started or have not expired.

Claims should be submitted to the IRB.

2.2.8 Tax Exemption on the Value of Increased Exports

A company which exports fresh and dried fruits, fresh and dried flowers, ornamental plants and ornamental fish enjoys a tax exemption of its statutory income equivalent to 10% of the value of its increased exports.

Claims should be submitted to the IRB.

2.2.9 Incentives for Companies providing Cold Chain Facilities and Services for Food Products

Companies providing cold room and refrigerated truck facilities, and related services such as collection and treatment of locally produced perishable food products qualify for Pioneer Status or Investment Tax Allowance. Activities located in the promoted areas are offered more attractive levels of Pioneer Status or ITA.

Applications received from existing locally owned companies to reinvest in cold chain facilities and service for perishable agricultural produce are eligible for the following incentives:

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

ii. Investment Tax Allowance of 60% (100% for promoted areas) on the additional qualifying capital expenditure incurred within a period of five years. The allowance can be offset against 70% (100% for promoted areas) of the statutory income for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

2.2.10 Double Deduction for Expenses to obtain "Halal" Certification and Quality Systems and Standards Certification

To enhance the competitiveness of Malaysian companies in the global market for "halal" products (products suitable for consumption by Muslims) including "halal" food, double deduction will be given for the purpose of income tax computation to companies which incur expenses in obtaining:

a. quality system and standards certification as well as 'halal' certification from the Department of Islamic Development Malaysia (JAKIM)

b. international quality systems and standards certification

This incentives is effective from the year of assessment 2005.

Claims should be submitted to IRB.

2.2.11 Double Deduction on Freight Charges for Export of Rattan and Wood-based Products

Manufacturers who export rattan and wood-based products (excluding sawn timber and veneer) qualify for double deduction on freight charges.

3.0 INCENTIVES FOR THE BIOTECHNOLOGY INDUSTRY

3.1 Main Incentives for the Biotechnology Industry

A company undertaking biotechnology activity and has been approved with BioNexus Status by the Malaysian Biotechnology Corporation Sdn Bhd is eligible for the following incentives:

a. 100% income tax exemption for 10 years commencing from the first year the company derives profit; or

b. Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of 5 years and effective from 2 September 2006, a BioNexus status company will be given a concessionary tax rate of 20% on income from qualifying activities for 10 years upon the expiry of the tax emption period. This enhanced incentive is effective from 2 September 2006.

c. Tax exemption on dividends distributed by a BioNexus status company;

d. Exemption of import duty and sales tax on raw materials/ components and machinery and equipment;

e. Double deduction on expenditure incurred for R&D; and

f. Double deduction on expenditure incurred for the promotion of exports;

g. Effective from 2 September 2006, buildings used solely for the purpose of biotechnology activities will be eligible for Industrial Building Allowance to be claimed over a period of 10 years.

3.2 Incentives for Investment in a BioNexus Status Company

3.2.1 Investment by a Parent Company to its Subsidiary

Efffective from 2 September 2006, a company that invests in its subsidiary, which is a BioNexus status company, is eligible for tax deduction equivalent to the amount of investment made in that subsidiary provided that the investing company own at least 70% of that subsidiary.

3.2.2 Investment by a Company or Individual to a BioNexus Status Company

Effective from 2 September 2006, a company or an individual investing in a BioNexus status company is eligible for a tax deduction equivalent to the total investment made in seed capital and early stage financing.

3.2.3 Tax Incentives for Mergers and Acquisitions with a Biotechnology Company

A BioNexus status company undertaking merger and acquisition with a biotechnology company is eligible for exemption of stamp duty and real property gain tax within a period of 5 years until 31 December 2011; and

Applications should be submitted to the Malaysian Biotechnology Corporation Sdn Bhd.

4.0 INCENTIVES FOR TOURISM INDUSTRY

Tourism projects, including eco-tourism and agro-tourism enjoy tax incentives. These include hotel businesses, construction of holiday camps, recreational projects including summer camps, and construction of convention centres with a capacity to accommodate at least 3,000 participants.

Hotel businesses refer to the following:

- Construction of medium and low-cost hotels (up to a three star category hotel as certified by the Ministry of Culture, Arts and Tourism); and
- Expansion/modernisation of existing hotels.

4.1 Main Incentives for the Tourism Industry

4.1.1 Pioneer Status

A company granted Pioneer Status enjoys a 5-year partial exemption from the payment of income tax. It will only have to pay tax on 30% of its statutory income,

commencing from its Production Day which is determined by the Minister of International Trade and Industry.

As an added incentive, applications received from 13 September 2003 from companies located in the promoted areas i.e. the States of Perlis, Sabah, Sarawak, the Federal Territory of Labuan and the designated "Eastern Corridor" of Peninsular Malaysia will enjoy a 100% tax exemption of their statutory income during the 5-year exemption period. This incentive applies to all applications received by 31 December 2010.

Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product.

Applications should be submitted to MIDA.

4.1.2 Investment Tax Allowance

As an alternative to Pioneer Status, a company may apply for Investment Tax Allowance (ITA). A company granted the ITA gets an allowance of 60% of the qualifying capital expenditure incurred within five years from the date on which the first qualifying capital expenditure is incurred.

Companies can offset this allowance against 70% of their statutory income in the year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been used up. The remaining 30% of the statutory income will be taxed at the prevailing company tax rate.

Applications received from companies located in the promoted areas i.e. the States of Perlis, Sabah and Sarawak, the Federal Territory of Labuan and the designated "Eastern Corridor" of Peninsular Malaysia, will enjoy an allowance of 100% on the qualifying capital expenditure incurred within a period of five years. The allowance can be utilised to offset against 100% of the statutory income for each year of assessment. All project applications received by 31 December 2010 will be eligible for this incentive.

4.1.3 Additional Incentives For Hotels And Tourism Projects

Applications received by MIDA from 13 September 2003 from companies to reinvest in the expansion, modernisation and renovation of hotels and tourism projects will be given another round of Pioneer Status or Investment Tax Allowance. However, hotels and tourism projects located in the promoted areas will enjoy the following enhanced incentives:

a. Pioneer Status, with a 100% income tax exemption. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

b. Investment Tax Allowance of 100%. The allowance can be offset against 100% of the statutory income in each year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been fully utilised.

4.1.4 Incentives for the Luxury Yacht Industry

The luxury yacht industry is promoted as part of tourism products and are eligible for the following incentives:

- Companies that construct luxury yachts are eligible for Pioneer Status incentive.

  Applications should be submitted to MIDA.

- Companies that carry out repair and maintenance activities for luxury yachts in the islands of Langkawi, Malaysia are eligible for income tax exemption of 100% for five years.

  Applications should be submitted to the Ministry of Finance.

- Companies that provide chartering services of luxury yacht in the country are eligible for income tax exemption of 100% for a period of five years.

  Claims should be submitted to the IRB.

4.2 Additional Incentives for the Tourism Industry

4.2.1 Double Deduction on Overseas Promotion

Hotels and tour operators qualify for double deduction on the expenditure incurred for promotional activities overseas. The qualifying expenditure are:

- Expenditure on publicity and advertisements in any mass media outside Malaysia
- Expenditure on the publication of brochures, magazines and guide books, including delivery costs that are not charged to the overseas customers
- Expenditure on market research into new markets overseas, subject to the prior approval of the Minister of Culture, Arts and Tourism
- Expenditure that includes fares to any country outside Malaysia to negotiate or secure a contract for advertising or participate in trade fairs, conferences or forums approved by the Minister of Culture, Arts and Tourism. Such expenses are subject to a maximum of RM300 per day for lodging and RM150 per day for food for the duration of the stay overseas
- Expenditure in organising trade fairs, conferences of forums approved by the Minister of Culture, Arts and Tourism; and
- Expenditure on the maintenance of sales offices overseas for purposes of promoting tourism to Malaysia.

Claims should be submitted to the IRB.

4.2.2 Double Deduction on Approved Trade Fairs

Companies also enjoy double deduction for expenditure incurred to participate in an approved international trade fair in Malaysia.

Claims should be submitted to the IRB.

4.2.3 Tax Exemption for Tour Operators

i. Foreign Tourists

Tour operators who bring in at least 500 foreign tourists a year through groups, inclusive of tours that enter and exit the country by air, sea or land transportation, will be exempted from tax in respect of income derived from the business of operating such tours. This incentive applies to tour operators licensed by the Ministry of Culture, Arts and Tourism.

ii. Local Tourists

Companies that organise domestic tour packages for at least 1,200 local tourists per year get a tax exemption on the income earned. A domestic tour means any tour package within Malaysia participated by local tourists (excluding inbound tourists) by air, land or sea transportation involving at least one night's accommodation.

Effective from 2 September 2006, the incentive is extended for another 5 years from the year of assessment 2006 until the year of assessment 2011.

Claims should be submitted to the IRB.

4.2.4 Tax Exemption for Promoting International Conferences and Trade Exhibitions

i. Local companies which promote international conferences in Malaysia qualify for tax exemption on income earned from bringing at least 500 foreign participants into the country

ii. Income earned from the organising international trade exhibitions in Malaysia qualifies for tax exemption as long as the exhibitions are approved by MATRADE and the organisers brings in at least 500 foreign visitors per year.

Claims should be submitted to the IRB.

4.2.5 Deduction on Cultural Performance

Expenditure incurred by companies promoting and managing a musical or cultural group and sponsoring local and/or foreign cultural performances as approved by the Ministry of Tourism, qualifies for a single deduction.

To further encourage the private sector to sponsor local arts, cultural and heritage performances and shows, expenditure incurred in sponsoring such performances and shows be increased from RM300,000 to RM500,000. However, the ceiling for deductions allowed on foreign performances and shows remains at RM200,000 per year effective from year of assessment 2007.

Claims should be submitted to the IRB.

4.2.6 Incentives for Car Rental Operators

Operators of car rental services for tourists are eligible for full excise duty exemption on the purchase of national cars.

However, effective 2 September 2006, to enable tourists to explore challenging destinations, tour operators are also eligible for a 50% excise duty exemption on locally assembled 4WD vehicles.

Applications should be submitted to the Ministry of Finance.

5.0 INCENTIVES FOR THE ENVIRONMENTAL MANAGEMENT

5.1 Incentives for Forest Plantation Projects

Companies that undertake forest plantation projects are eligible for the following incentives:

(i) Pioneer Status with a tax exemption of 100% of the statutory income for 10 years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

(ii) Investment Tax Allowance (ITA) of 100% on the qualifying capital expenditure incurred within five years, which can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until the whole amount has been fully utilised.

Applications should be submitted to MIDA.

5.2 Incentives for the Storage, Treatment and Disposal of Toxic and Hazardous Wastes

Incentives are offered to encourage the setting up of proper facilities to store, treat and dispose of toxic and hazardous wastes. Companies that are directly involved in these three activities in an integrated manner qualify for:

(i) Pioneer Status with a tax exemption of 70% of the statutory income for five years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

(ii) ITA of 60% on the qualifying capital expenditure incurred within five years, which can be offset against 70% of the statutory income in the year of assessment. Any unutilised allowances can be carried forward to subsequent years until the whole amount has been fully utilised.

Activities located in the States of Perlis, Sabah and Sarawak and the "Eastern Corridor" of Peninsular Malaysia are eligible for higher exemptions/allowances under Pioneer Status or Investment Tax Allowance in accordance with that given for promoted areas.

Applications should be submitted to MIDA.

5.3 Incentives for Energy Conservation

In order to reduce operation costs and at the same time promote environmental preservation, companies providing energy conservation services are eligible for the following incentives:

(i) Pioneer Status with a tax exemption of 70% of the statutory income for five years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

(ii) ITA of 60% on the qualifying capital expenditure incurred within five years, which can be offset against 70% of the statutory income for each year of assessment. Any

unutilised allowances can be carried forward to subsequent years until the whole amount has been fully utilised.

Activities located in the promoted areas i.e. the States of Perlis, Sabah, Sarawak and the "Eastern Corridor" of Peninsular Malaysia, are eligible for the Pioneer Status and ITA incentives in accordance with that given to promoted areas.

The companies must implement their projects within one year of approval. The incentives apply to applications received by 31 December 2010 .

Companies which undertake conservation of energy for own consumption are also eligible for ITA of 60% on the qualifying capital expenditure incurred within 5 years with the allowance to be offset against 70% of the statutory income for each year of assessment. Any unutilised allowance can be carried forward until the whole amount has been fully utilised. Activities located in the promoted areas i.e. the States of Perlis, Sabah, Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia, are eligible for the ITA incentives in accordance with that given to promoted areas.

This incentive applies to applications received from 1 October 2005 until 31 December 2010.

Applications should be submitted to MIDA.

5.4 Incentives for Waste Recycling Activities

Companies undertaking waste recycling activities that are high value-added and use high technology are eligible for Pioneer Status or ITA. These activities include the recycling of agricultural wastes or agricultural by-products, recycling of chemicals and the production of reconstituted wood-based panel boards or products. Activities located in the States of Perlis, Sabah and Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia are eligible for higher exemptions/ allowances under Pioneer Status or ITA in accordance with that given for promoted areas.

Applications should be submitted to MIDA.

5.5 Incentives for the Use of Renewable Energy Resources

Companies undertaking generation of energy using biomass, hydropower (not exceeding 10 megawatts) and solar power that are renewable and environmentally friendly are eligible for the following incentives:

(i) Pioneer Status with a tax exemption of 100% on statutory income for 10 years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

(ii) Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of 5 years. This allowance can be offset against 100% of the statutory income for each year of assessment. Any unutilised allowances can be carried forward to subsequent years until the whole amount has been fully utilised.

These incentives are for applications received from 1 October 2005 until 31 December 2010. Companies which have been granted approval for these incentives but have not implemented the projects are also eligible for these incentives. Companies must implement their projects within one year from the date of approval.

For the purpose of this incentive, 'biomass sources' refer to palm oil mill/estate waste, rice mill waste, sugar cane mill waste, timber/sawmill waste, paper recycling mill waste, municipal waste and biogas (from landfill, palm oil mill effluent (POME), animal waste and others), while energy forms refer to electricity, steam, chilled water, and heat.

Applications should be submitted to MIDA.

5.6 Additional Incentives for Environmental Management

5.6.1 Accelerated Capital Allowance

This incentive provides for a special allowance at an initial rate of 40% and an annual rate of 20% (to be written off within a period of 3 years) for capital expenditure on related machinery and equipment incurred by:

- Companies that are waste generators and wish to establish facilities to store, treat and dispose of their wastes, either on-site or off-site; and
- Companies undertaking waste recycling activities.

Applications should be submitted to IRB.

In the case of companies that incur capital expenditure for conserving their own energy consumption, the write-off period is accelerated to one year effective from the year of assessment 2003. Applications should be submitted to the IRB with a letter from the Ministry of Energy, Water and Communications Malaysia certifying that the related equipment is used exclusively for the purpose of energy conservation.

5.6.2 Accelerated Capital Allowance for Equipment Used for the Generation of Renewable Energy for Own Consumption

To further promote the use of renewable energy, equipment used by companies to generate energy from renewable resources for its own consumption will be granted Accelerated Capital Allowance to be fully claimed in one year period effective from the year of assessment of 2005.

The equipment eligible for Accelerated Capital Allowance shall be determined by the Ministry of Finance.

Applications should be submitted to IRB.

6.0 INCENTIVES FOR RESEARCH AND DEVELOPMENT

The Promotion of Investments Act 1986 defines research and development (R&D) as "any systematic or intensive study carried out in the field of science or technology with the object of using the results of the study for the production or improvement of materials, devices, products, produce or processes but does not include:

- quality control of products or routine testing of materials, devices, products or produce
- research in the social sciences or humanities
- routine data collection
- efficiency survey or management studies
- market research or sales promotion."

To further strengthen Malaysia's foundation for a more integrated R&D, companies which carry out designing or prototyping as independent activities are eligible for incentives.

6.1 Main Incentives for Research and Development

6.1.1 Contract R&D Company

A contract R&D company, i.e., a company that provides R&D services in Malaysia to a company other than its related company, is eligible for:

- Pioneer Status with a tax exemption of 100% of the statutory income for five years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or
- Investment Tax Allowance (ITA) of 100% on the qualifying capital expenditure incurred within 10 years, which can be offset against 70% of the statutory income in the year of assessment. Any unutilised capital allowance can be carried forward to subsequent years until fully utilised.

Applications should be submitted to MIDA.

6.1.2 R&D Company

An R&D company, i.e., a company that provides R&D services in Malaysia to its related company or to any other company, is eligible for an ITA of 100% on the qualifying capital expenditure incurred within 10 years. The allowance can be offset against 70% of the statutory income in the year of assessment. Should the R&D company opt not to avail itself of the allowance, its related companies can enjoy double deduction for payments made to the R&D company for services rendered.

Applications should be submitted to MIDA.

Eligibility

Contract R&D and R&D companies can apply for the various incentives as long as they fulfill the following criteria:

- Research undertaken should be in accordance with the needs of the country and bring benefit to the economy
- At least 70% of the income of the company should be derived from R&D activities

- For manufacturing-based R&D, at least 50% of the workforce of the company must be appropriately qualified personnel performing research and technical functions; and
- For agriculture-based R&D, at least 5% of the workforce of the company must be appropriately qualified personnel performing research and technical functions.

6.1.3 In-house Research

A company which undertakes research and development in-house to further its business can apply for 50% ITA on the qualifying capital expenditure incurred within 10 years. The company can offset the ITA against 70% of the statutory income in the year of assessment.

Applications should be submitted to MIDA.

6.1.4 Second Round Incentives

Effective from 21 May 2003, R&D companies/activities mentioned in categories 6.1.1 - 6.1.3 will be eligible for a second round of Pioneer Status for another five years, or ITA for a further 10 years, where applicable.

Applications should be submitted to MIDA.

6.1.5 Incentives for Commercialisation of Public Sector R&D

To encourage commercialisation of resource-based R&D findings by the public research institutes, the following incentives are given:

(a) A company that invests in its subsidiary company engaged in the commercialisation of the R&D findings will be given tax deduction equivalent to the amount investment made in the subsidiary company; and

(b) The subsidiary company that undertakes the commercialisation of the R&D findings will be given Pioneer Status with 100% tax exemption on statutory income for 10 years.

The incentive is provided on the following conditions:

(a) At least 70% of the investing company (holding company) and the company undertaking the commercialisation projects is owned by Malaysians;

(b) Company which invests should own at least 70% of the equity of the company that commercialises the R&D findings

(c) The commercialisation of the R&D findings should be implemented within one year from the date of approval of the incentive.

Applications should be submitted to MIDA.

6.2 Additional Incentives for Research and Development

6.2.1 Double Deduction for Research & Development

A company can enjoy a double deduction on its revenue (non-capital) expenditure for research which is directly undertaken and approved by the Minister of Finance.

Double deduction can also be claimed for cash contributions or donations to approved research institutes, and payments for the use of the services of approved research institutes, approved research companies, R&D companies or contract R&D companies.

Approved R & D expenditure incurred during the Pioneer Status period will be allowed to be accumulated and brought forward and be given another deduction after the Pioneer Status period.

Expenditure on R&D activities undertaken overseas, including the training of Malaysian staff, will be considered for double deduction on a case-by-case basis.

Claims should be submitted to the IRB.

6.2.2 Incentives for Researchers to Commercialise Research Findings

Effective from the year of assessment 2004, researchers who undertake research focused on value creation will be given a 50% tax exemption for five years on the income that they receive from the commercialisation of their research findings. The undertaking has to be verified by the Ministry of Science, Technology and Innovations.

Claims should be submitted to the IRB.

7.0 INCENTIVES FOR TRAINING

To encourage human resource development, the following incentives are available:

7.1 Investment Tax Allowance

Companies that establish technical or vocational training institutions are eligible for an Investment Tax Allowance of 100% for 10 years. This allowance can be offset against 70% of the statutory income for each year of assessment.

Existing companies providing technical or vocational training that undertake new investments to upgrade their training equipment or expand their training capacities also qualify for this incentive.

Effective from 1 October 2005, the incentive is extended to:

- Private Higher Education Institutions (PHEIs) in the field of science; and
- Existing Private Higher Education Institutions (PHEIs) in the field of science that undertake new investments to upgrade their training equipment or expand their training capacities.

The qualifying science courses are as follows:

i. Biotechnology
   - Medical and health biotechnology
   - Plant biotechnology
   - Food biotechnology
   - Industrial and environment biotechnology
   - Pharmaceutical biotechnology
   - Bioinformatics biotechnology

ii. Medical and Health Science
   - Medical science in gerontology
   - Medical science in clinical research
   - Medical biosciences
   - Biochemical genetics
   - Environmental health
   - Community health

iii. Molecular Biology

- Immunology
- Immunogenetics
- Immunobiology

iv. Material sciences and technology

v. Food science and technology

Applications should be submitted to MIDA.

7.2 Additional Incentives for Training

7.2.1 Special Industrial Building Allowance

Companies that incur expenditure on buildings used for approved industrial, technical or vocational training can claim a special annual Industrial Building Allowance (IBA) of 10% for 10 years.

Claims should be submitted to the IRB.

7.2.2 Tax Exemption on Educational Equipment

Besides approved training institutes and in-house training projects, all private institutions of higher learning are eligible for import duty, sales tax and excise duty exemptions on all educational equipment including laboratory equipment for workshops, studios and language laboratories.

Applications should be submitted to MIDA.

7.2.3 Tax Exemption on Royalty Payments

Royalty payments made by educational institutions to non-residents (franchisors) for franchised education scheme programmes that are approved by the Ministry of Education are eligible for tax exemption.

Claims should be submitted to the IRB.

8.0 INCENTIVES FOR INFORMATION AND COMMUNICATION TECHNOLOGY (ICT)

8.1 Main Incentives for Information and Technology (ICT)

8.1.1 Incentive for Software Development

In line with the government's objective to encourage the development of computer software, companies that develop both original and/or undertake major modifications

of existing software other than those deemed established are eligible for Pioneer Status with tax exemption of 70% of the statutory income for five years. This incentive is given based on the following guidelines:

- The computer software must be for a general purpose and not for a specific customer
- For companies undertaking modifications of existing software packages, the cost of acquiring the existing packages must not exceed 25% of the modification expenditure, which includes software tools, labour and equipment costs.

Applications should be submitted to MIDA.

8.2 Additional Incentives for the Use of ICT

8.2.1 Accelerated Capital Allowance

Companies receive an initial allowance of 20% and an annual allowance of 40% for expenditure incurred in acquiring computers and information technology assets including software. Thus, the expenditure can be written off within two years.

The cost of developing websites is allowed as an annual deduction of 20% for a period of five years.

8.2.2 Other ICT Incentives

Companies enjoy a single deduction on:

- Operating expenditure including payments to consultants related to IT usage for improving management and production processes.
- Contributions in cash or kind for ICT acculturation projects at local community levels. This is effective until year of assessment 2003.
- Computers given by employers to their employees until year of assessment 2003 are not deemed as income.

Claims should be submitted to the IRB.

8.2.3 Tax Exemption on the Value of Increased Exports

Companies in the ICT sector can apply for a tax exemption on their statutory income equivalent to 50% of the value of increased exports.

Claims should be submitted to the IRB.

9.0 INCENTIVES FOR APPROVED SERVICE PROJECTS (ASPS)

Approved Service Projects (ASPs) or projects in the transportation, communications and utilities sub-sectors approved by the Minister of Finance qualifying for the following tax incentives:

9.1 Main Incentives for ASPs

9.1.1 Exemption Under Section 127 of the Income Tax Act 1967

Generally, under Section 127 of the Income Tax Act 1967, companies undertaking ASPs can apply for tax exemption of 70% of their statutory income for five years. However, companies undertaking ASPs in Perlis, Sabah, Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia are eligible for tax exemption of 85% of their statutory income for five years, while companies undertaking ASPs of national and strategic importance are eligible for 100% tax exemption of their statutory income for 10 years.

Applications should be submitted to the Ministry of Finance.

9.1.2 Investment Allowance (IA) Under Schedule 7B of the Income Tax Act 1967

The Investment Allowance (1A) under Schedule 7B of the Income Tax Act 1967 is an alternative to the incentive offered under Section 127. Generally, under 1A, companies undertaking ASPs are eligible for an allowance amounting to 60% on the qualifying capital expenditure incurred within five years from the date the first capital expenditure is incurred. The allowance can be offset against 70% of the statutory income and any unutilised allowance can be carried forward to subsequent years until fully utilised.

However, companies undertaking ASPs in Perlis, Sabah, Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia, are eligible for an allowance of 80% on the qualifying expenditure which can be offset against 85% of the statutory income.

Companies undertaking ASPs of national and strategic importance will be granted an allowance of 100% on the qualifying capital expenditure incurred within five years. This allowance can be offset against 100% of the statutory income.

Applications should be submitted to the Ministry of Finance.

9.2 Additional Incentives for ASPs

9.2.1 Exemption from Import Duty and Sales Tax and Excise Duty on Raw Materials, Components, Machinery, Equipment, Spares and Consumables.

Imports of raw materials and components not available locally and used directly to implement ASPs are eligible for exemption from import duty and sales tax, while locally purchased machinery or equipment are eligible for exemption from sales tax and excise duty.

Companies providing services in the transportation and telecommunications sectors, power plants and port operators can apply for import duty and sales tax exemption on spares and consumables that are not produced locally.

The above applications should be submitted to the Ministry of Finance.

10.0 INCENTIVES FOR THE SHIPPING AND TRANSPORTATION INDUSTRY

10.1 Tax Exemption for Shipping Operation

The income of a shipping company derived from the operation of Malaysian ships is exempted from tax. This incentive only applies to residents. A "Malaysian Ship" is a sea-going ship registered as such under the Merchant Shipping Ordinance 1952 (Amended), other than a ferry, barge, tugboat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessels.

The income of any person derived from exercising an employment on board a "Malaysian Ship" is exempted from tax. Income received by non-residents from the rental of ISO containers to Malaysian shipping companies is also exempted from income tax.

Claims should be submitted to the IRB.

10.2 Exemption from Import Duty and Sales Tax on Prime Movers and Trailers

Container hauliers qualify for import duty and sales tax exemptions on prime movers and trailers that are not produced locally, while sales tax exemption can be considered for prime movers and trailers that are produced locally.

Applications should be submitted to the Ministry of Finance.

11.0 INCENTIVES FOR THE MULTIMEDIA SUPER CORRIDOR (MSC)

The Multimedia Super Corridor (MSC), a 15-by-50 kilometre (9-by-30 mile) zone extending south from Malaysia's capital city and business hub, Kuala Lumpur, is a perfect environment for companies wanting to create, distribute and employ multimedia products and services.

MSC Status is the recognition by the Government of Malaysia through the Multimedia Development Corporation (MDC) to companies that participate and undertake ICT activities in the MSC. Companies with MSC status enjoy a set of incentives and benefits that is backed by the Government of Malaysia's Bill of Guarantees.

11.1 Main Incentives from MSC Status Company

MSC status multimedia companies operating in Malaysia MSC Cybercities/Cybercentres namely Cyberjaya, Technology Park Malaysia, Kuala Lumpur City Centre, UPM-MTDC, Penang Cybercity-1, Kulim High Tech Park in Kedah, KL Sentral, Melaka International Trade Centre and MSC Cyberport Johor as well as multimedia faculties located in institutions of higher learning outside the cybercities, are eligible for the following incentives.

i. Pioneer Status with a tax exemption of 100% of the statutory income for a period of 10 years or Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of 5 years to be offset against 100% of statutory income for each year of assessment.

ii. Eligibility for R&D grants (for majority Malaysian-owned MSC Status companies)

Applications for MSC Status should be submitted to Multimedia Development Corporation (MDeC).

Other Benefits

- Duty-free import of multimedia equipment
- Intellectual property protection and a comprehensive framework of cyberlaws
- No censorship of the Internet
- World-class physical and IT infrastructure
- Globally competitive telecommunication tariffs and services

- Consultancy and assistance by the Multimedia Development Corporation to companies within the MSC
- High quality, planned urban development
- Excellent R&D facilities
- Green and protected environment

11.2 Main Incentives from MSC Status Company

Selected companies undertaking ICT and multimedia activities including Regional Shared Services outside the Cybercities are eligible for the following incentives:

i. Pioneer Status with 50% tax exemption on statutory income for a period of 5 years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

ii. Investment Tax Allowance (ITA) of 50% on qualifying capital expenditure incurred within a period of 5 years to be offset against 50% of statutory income for each year of assessment. Any unutilised allowances can be carried to subsequent years until fully utilised.

12.0 INCENTIVES FOR A KNOWLEDGE-BASED ECONOMY

Malaysia is in the process of transforming itself from a production-based to a knowledge-based economy. To further encourage companies to invest in knowledge-intensive activities, certain companies that qualify will be granted "Strategic Knowledge-based Status". These companies must have the following characteristics:

- the potential to generate knowledge content
- high value-added operations
- usage of high technology
- a large number of knowledge workers
- possess a corporate knowledge-based master plan

Companies granted "Strategic Knowledge-based Status" are eligible for the following incentives:

i. Pioneer Status with a tax exemption of 100% of the statutory income for a period of five years. Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product; or

ii. Investment Tax Allowance of 60% on the qualifying capital expenditure incurred within five years. The allowance can be offset against 100% of the statutory income in the year of assessment. Any unutilised allowances can be carried forward to subsequent years until fully utilised.

The expenditure incurred by a company for drafting its corporate knowledge-based master plan is eligible for deduction in the computation of income tax. The deduction can be claimed when the company begins to implement its corporate knowledge-based master plan.

13.0 INCENTIVES FOR THE MANUFACTURING RELATED SERVICES

Companies eligible for incentives are those providing the following value-added manufacturing related services:

- Integrated logistic services which comprise the entire supply chain management, including the procurement of software and hardware, warehousing, distribution (transportation and freight services), packaging activities and customs clearance
- Integrated market support services which comprise the activities of brand development, consumer development, packaging design, advertising and promotion
- Integrated central utility facilities which provide services such as the supply of steam, demineralised water and industrial gas
- Cold chain facilities that provide a wide range of services including cold room, refrigerated truck and other related services such as the collection, storage and distribution of perishable locally produced food products

13.1 Pioneer Status

Companies undertaking manufacturing related services are eligible for Pioneer Status which provides a tax exemption on 70% of the statutory income for a period of five years.

Applications received from companies located in the promoted areas i.e. the States of Perlis, Sabah and Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia, are eligible for a 100% tax exemption of their statutory income during the 5-year exemption period. This incentive applies to all applications received by 31 December 2010.

Accumulated losses and unabsorbed capital allowances incurred during the pioneer period by companies whose pioneer status will expire on and after 1 October 2005 are allowed to be carried forward and deducted against post-pioneer income of a business relating to the same promoted activity or promoted product.

Applications should be submitted to MIDA.

13.2 Investment Tax Allowance

As an alternative to Pioneer Status, a company may apply for Investment Tax Allowance (ITA). A company granted the ITA gets an allowance of 60% of the qualifying capital expenditure incurred within five years from the date on which the first qualifying capital expenditure is incurred.

Companies can offset this allowance against 70% of their statutory income in the year of assessment. Any unutilised allowances can be carried forward to subsequent years until the whole amount has been used up. The remaining 30% of the statutory income will be taxed at the prevailing company tax rate.

Applications received from companies located in the promoted areas i.e. the States of Perlis, Sabah and Sarawak, the Federal Territory of Labuan and the designated "Eastern Corridor" of Peninsular Malaysia, will enjoy an allowance of 100% on the qualifying capital expenditure incurred within a period of five years. The allowance can be utilised to offset against 100% of the statutory income for each year of assessment. All project applications received by 31 December 2010 will be eligible for this incentive.

Applications should be submitted to MIDA.

14.0 INCENTIVES FOR OPERATIONAL HEADQUARTERS

An approved operational headquarters (OHQ) generally refers to a company that provides qualifying services to its offices or related companies regionally and globally.

A company that establishes an OHQ in Malaysia can be considered for tax incentives and facilities under the OHQ incentive programme. A company is granted OHQ status and tax incentives under Section 127 of the Income Tax Act 1967 for the provision of qualifying services to its offices or related companies within and outside Malaysia.

14.1 Approvals for OHQ Status, Incentives and Other Facilities

Companies that meet the following criteria can apply for OHQ status and incentives:

- Locally incorporated under the Companies Act 1965
- A minimum paid-up capital of RM0.5 million
- A minimum total business spending (operating expenditure) of RM1.5 million per year
- Appoint at least three senior professional/ management personnel
- Serve at least three related companies outside Malaysia
- Have a sizeable network of companies outside Malaysia which includes the parent company or headquarters, and other related companies
- Have a well-established network of companies that employ a significant and substantial number of qualified professionals, technical and supporting personnel
- Carry out a minimum of three qualifying services:

  The qualifying services are as follows:

  - General management and administration
  - Business planning and coordination
  - Coordination of procurement of raw materials, components and finished products
  - Technical support and maintenance
  - Marketing control and sales promotion planning
  - Data/ information management and processing

- Research and development (R&D) work carried out in Malaysia on behalf of its offices or related companies within or outside Malaysia
- Training and personnel management for its offices or related companies within or outside Malaysia

Treasury and fund management services to its offices or related companies outside Malaysia which include :

- Providing credit facilities, transacting or investing in stocks, shares and securities (including bonds, notes, certificates of deposits and treasury bills) in foreign currencies that are issued either by foreign governments, foreign banks outside Malaysia, or companies that are neither incorporated nor a resident in Malaysia
- Transacting or investing in certificates of deposits, notes and bonds denominated in a foreign currency that are issued by any offshore bank in Labuan
- Investing in foreign currency deposits with designated banks in Malaysia or offshore banks in Labuan
- Foreign exchange transactions and interest rate/ currency swaps for hedging purposes that are made in a foreign currency and conducted through authorised dealers and licensed offshore banks in Labuan
- Transactions in financial futures contracts or options for hedging purposes made only with a member of an exchange approved by Malaysia 's central bank, Bank Negara Malaysia (BNM).

The funds for carrying out the treasury and fund management activities are to be obtained only through borrowings made from authorised banks in Malaysia and offshore banks in Labuan; or from the OHQ company's paid-up capital, its accumulated profits derived from qualifying activities, or the accumulated profits of its offices or from borrowings sourced from outside Malaysia.

An OHQ set up by a financial institution is prohibited from providing treasury and fund management services to their related companies in Malaysia unless the related companies are institutions licensed under the Banking and Financial Institution Act 1989 (BAFIA).

Corporate financial advisory services to its offices and related companies outside Malaysia which include:

- Provision of credit administration denominated in currencies other than the Malaysian Ringgit for related companies
- Arrangement of credit facilities denominated in currencies other than the Malaysian Ringgit for related companies
- Arrangement of interest rate or currency swaps in currencies other than the Malaysian Ringgit
- An OHQ company may take over claims held by related companies and/or from third parties outside Malaysia at a discounted price (factoring)
- All products and services which related companies invoice to each other can be re-invoiced by the OHQ (re-invoicing)
- Netting of payments, other than the export proceed for goods exported from Malaysia, among related companies vis-à-vis the OHQ, is freely allowed
- An OHQ company may purchase machinery, equipment or real estate with a view to lease them to its related companies (leasing)
- An OHQ company may purchase machinery, equipment or real estate belonging to related companies with a view to lease them back to the same related companies (sales and lease back arrangements).

14.2 Equity Requirements

A company granted OHQ status and incentives under Section 127 of the Income Tax Act 1967, is allowed 100% foreign equity ownership.

14.3 Incentives

- Business Income

  Income arising from services rendered by an OHQ company to its offices or related companies outside Malaysia

- Interest

  Income derived from interest on foreign currency loans extended by an OHQ company to its offices or related companies outside Malaysia

- Royalties

  Royalties received from R&D work carried out in Malaysia by an OHQ company on behalf of its offices or related companies outside Malaysia .

The income generated by an OHQ company in providing qualifying services to its offices and related companies in Malaysia will not be taxed during its tax-exempt period, provided such income does not exceed 20% of its overall income derived by providing qualifying services. Any excess of the 20% limit will not be exempted from tax.

An existing OHQ company will be given a 100% income tax exemption for its remaining exemption period.

Applications should be made to the Ministry of Finance.

14.4 Other Facilities

Other facilities accorded to an approved OHQ are as follows:

- Open foreign currency account (FCA) with licensed onshore banks to retain any amount of export proceeds in foreign currency.
- Open FCA with licensed onshore banks, licensed offshore banks in Labuan or overseas banks for crediting foreign currency receivables, other than export proceeds, with no limit imposed on the overnight balances.
- Obtain any amount of domestic credit facilities in ringgit
- Obtain any amount of foreign currency credit facilities from licensed onshore banks and licensed merchant banks in Malaysia and from any non-residents, provided the OHQ does not on-lend to, or raise the funds on behalf of, any resident
- Invest abroad any amount, including extension of credit facilities to their related overseas companies, to be funded with foreign currency funds or borrowing. They may also convert any amount if they have no domestic credit facilities or up to RM10 million if they have domestic credit facilities into foreign currency per calendar year for investment abroad
- Use professional services of foreign firms, provided that such services are not available locally
- Acquire fixed assets as long as the fixed assets are used for the purpose of carrying out the operations of the OHQ

- Expatriates working in OHQ companies are taxed only on the portion of their chargeable income attributable to the numbers of days that they are in Malaysia.

Applications should be made to MIDA.

15.0 INCENTIVES FOR INTERNATIONAL PROCUREMENT CENTRES / REGIONAL DISTRIBUTION CENTRES

International Procurement Centres

An international procurement centre (IPC) is a locally incorporated company, which carries on a business in Malaysia to undertake procurement and sale of raw materials, components and finished products for its group of related companies and unrelated companies in Malaysia and abroad. This would include procurement from, and sales made to, local sources and third countries.

Regional Distribution Centres

A regional distribution centre (RDC) is a collection and consolidation centre for finished goods, components and spare parts produced by its own group of companies for its own brand to be distributed to dealers, importers or its subsidiaries or other unrelated companies within or outside the country. Among the value-added activities involved are bulk breaking, repackaging and labelling.

15.1 Approvals for IPC/RDC Status

Companies that meet the following criteria can apply for an IPC/ RDC status:-

- Locally incorporated under the Companies Act 1965
- A minimum paid-up capital of RM0.5 million
- A minimum total business spending (operating expenditure) of RM1.5 million per year
- Utilisation of Malaysian ports and airports
- A minimum annual sales turnover of RM50 million by the third year of operation
- Domestic sales of not more than 20% of its annual sales value.
- Domestic sales of not more than 20% of its annual sales value. Not more than 30% of its annual sales turnover is derived from the sourcing of goods from outside Malaysia to overseas destinations via drop shipment.

15.2 Equity Requirements

A company granted IPC/RDC status and incentives under Section 127 of the Income Tax Act 1967, is allowed 100% foreign equity ownership.

15.3 Incentives

An approved IPC/RDC status company can be considered for:

- Full tax exemption of its statutory income for 10 years, under Section 127 of the Income Tax Act 1967
- Dividends paid from the exempt income will be exempted from tax in the hands of its shareholders

Eligibility Criteria

However, to qualify for the above incentives, an approved IPC/RDC status company must also fulfil the following additional criteria:

- It must have an annual sales turnover of at least RM100 million.
- Sales to the domestic market including sales to free zones (FZs) and licensed manufacturing warehouses (LMWs) are limited to 20% of its sales turnover. If sales to the domestic market exceed 20%, the additional sales will not be exempted from tax.

15.4 Other Benefits

An approved IPC/RDC status company will enjoy the following benefits:

- Expatriate posts based on the requirements of the IPC/RDC
- Open one or more FCA with licensed commercial banks to retain its export proceed without any limit
- Enter into foreign exchange forward contracts with licensed commercial banks to sell forward export proceeds based on its projected sales
- Bring in raw materials, components or finished products with customs duty exemption into free industrial zones (FIZs), free commercial zones (FCZs), LMWs and bonded warehouses for re-packaging, cargo consolidation and integration before distribution to its final consumers.

15.5 Expatriate Employment

Companies applying for IPC/RDC status can also apply for expatriate posts, namely Key Posts and Time Posts. Upon approval, companies should forward their applications for Employment Passes to the Immigration Department for endorsement.

Applications should be made to MIDA.

16.0 REPRESENTATIVE OFFICES AND REGIONAL OFFICES

A Representative Office/Regional Office of a foreign company based in Malaysia performs permissible activities for its headquarters/principal. Such offices should be totally funded from sources outside Malaysia and are not required to be incorporated or be registered with the Companies Commission of Malaysia (CCM) under the Companies Act 1965.

Representative Office

An approved representative office collects relevant information regarding investment and business opportunities to develop bilateral trade relations and promote the export of Malaysian goods and products.

Regional Office

An approved regional office serves as the coordination centre for its affiliates, subsidiaries and agents within the Asia Pacific region. It is responsible for conducting designated activities within the region it operates.

The approval for the establishment of Representative/regional offices and expatriate employment is valid for a period of two years and is renewable.

16.1 Activities Allowed

An approved representative office/regional office is allowed to carry out the following activities:

- Planning or coordination of business activities
- Gathering and analising information or undertaking feasibility studies on investment and business opportunities in Malaysia and the region
- Identifying sources of raw materials, components or other industrial products
- Undertake research and product development
- Act as a coordination centre for the corporation's affiliates, subsidiaries and agents in the region

16.2 Activities Not Allowed

However, an approved representative office/regional office is not allowed to carry out the following activities:

- Engage in any trading (including import and export), business or any form of commercial activity
- Lease warehousing facilities. Any shipment/transshipment or storage of goods must be carried out through a local agent or distributor
- Sign business contracts on behalf of the foreign corporation or provide services for a fee
- Participate in the daily management of any of its subsidiaries, affiliates or branches in Malaysia
- Conduct any business transaction or derive income from its operations

16.3 Equity Requirements

As Representative/Regional Offices do not have issued capital in Malaysia , they are not subject to any equity condition.

16.4 Incentives

Expatriates working in regional offices are taxed only on the portion of their chargeable income attributable to the number of days that they are in Malaysia.

16.5 Expatriate Employment

An approved Representative/Regional Office is allowed to employ expatriates at the managerial and technical level.

Applications for the establishment of Representative /Regional Offices and expatriate posts should be submitted to MIDA.

Upon approval, companies should forward their applications for Employment Passes to the Immigration Department for endorsement.

Applications should be submitted to MIDA.

For further information in assessing and understanding the living environment in Malaysia, please refer to MIDA's publication, the "Expatriate Living in Malaysia".

17.0 OTHER INCENTIVES

This section covers other incentives not mentioned else where and may be applicable to the following sectors: manufacturing, agriculture, tourism, environmental management, research and development, training, information and communication technology, Approved Service Projects and manufacturing related services.

17.1 Industrial Building Allowance

An Industrial Building Allowance (IBA) is granted to companies incurring capital expenditure on the construction or purchase of a building that is used for specific purposes, including manufacturing, agriculture, mining, infrastructure facilities, research, Approved Service Projects and hotels that are registered with the Ministry of Culture, Arts and Tourism. Such companies are eligible for an initial allowance of 10% and an annual allowance of 3%. As such, the expenditure can be written off in 30 years.

Claims should be submitted to the IRB.

17.2 Industrial Buiding Allowance for Buildings in MSC

To encourage the construction of more buildings in Cyberjaya for use by MSC status companies, IBA for a period of 10 years will be given to owners of new buildings occupied by MSC status companies in Cyberjaya. Such new buildings include completed buildings but are yet to be occupied by MSC status companies.

Claims should be submitted to the IRB.

17.3 Infrastructure Allowance

Companies in the States of Perlis, Sabah and Sarawak and the designated "Eastern Corridor" of Peninsular Malaysia are also eligible for an Infrastructure Allowance of 100%. Companies eligible are those engaged in manufacturing, agriculture, hotel, tourism or other industrial/commercial activities and which incur qualifying capital expenditure on infrastructure such as the reconstruction, extension and improvement of any permanent structure including bridges, jetties, ports and roads.

These companies can offset the allowance against 100% of their statutory income in the year of assessment. The remaining statutory income will be taxed at the prevailing company tax rate. Any unutilised allowances can be carried forward to subsequent years until fully utilised. This incentive applies to all applications received by 31 December 2010.

Claims should be submitted to the IRB.

17.4 Double Deduction for Expenses to Obtain "Halal" Certification and Quality Systems and Standards Certification

Effective from the year of assessment 2005, for the purpose of income tax computation, double deduction will be given to companies which incur expenses in obtaining;

a. quality system and standards certification as well as 'halal' certification from the Department of Islamic Development Malaysia (JAKIM)

b. international quality systems and standards certification

Claims should be submitted to the IRB.

17.5 Deduction of Audit Fees

To reduce the cost of doing business and enhance corporate compliance, expenses incurred on audit fees by companies are deemed as allowable expenses for deduction in the computation of income tax.

The incentive is effective from the year of assessment 2006.

Claims should be submitted to the IRB.

17.6 Tax Incentives for Venture Capital Industry

Currently, venture capital companies (VCCs) have the option to choose between the following incentives:

a) income tax exemption for 10 years for investing at least 70% of its investment funds in venture companies (VCs) in the form of seed capital, start-up or early stage financing; or

b) deduction for income tax purposes equivalent to the value of investment made in VCs

However, effective from the year assessment of 2007, VCCs investing at least 50% of its investment funds in VCs in the form of seed capital are eligible for income tax exemption for 10 years.

Claims should be submitted to the IRB.

17.7 Tax Incentives for Mergers and Acquisitions of Listed Companies

To encourage public listed companies to expand and compete globally, stamp duty and real property gain tax (RPGT) exemptions are given on M&A undertaken by companies listed in Bursa Malaysia. This exemption is given to M&A approved by the

Securities Commission from 1 October 2005 to 31 December 2007 and such M&A should be completed not later than 31 December 2008.

Claims should be submitted to the IRB.

17.8 Incentive for Acquiring a Foreign-Owned Company

A Malaysian-owned company that acquires a foreign-owned company abroad to acquire high technology for production within the country or to gain new export markets for local products, will be granted a deduction equivalent to the acquisition costs for five years.

17.9 Incentive for Acquiring Proprietary Rights

Capital expenditure incurred in acquiring patents, designs, models, plans, trade marks or brands and other similar rights from foreigners qualify as a deduction in the computation of income tax. This deduction is given in the form of an annual deduction of 20% over a period of five years.

Claims should be submitted to the IRB.

17.10 Tariff Related Incentives

17.10.1 Exemption from Import Duty on Raw Materials/ Components

Full exemption from import duty can be considered for raw materials/components, regardless of whether the finished products are meant for the export or domestic market.

With regard to products for the export market, full exemption from import duty on raw materials/ components is normally granted, provided the raw materials/components are not produced locally or, where they are produced locally, are not of acceptable quality and price.

As for products for the domestic market, full exemption from import duty on raw materials/components that are not produced locally can be considered. Full exemption can also be considered if the finished product made from dutiable raw materials/components is not subject to any import duty.

Applications should be submitted to MIDA.

Hotel and tourism projects qualify for full exemption of import duty and sales tax on identified imported materials/equipment and exemption of sales tax on identified locally purchased equipment.

Applications should be submitted to the Ministry of Finance.

17.10.2 Import Duty Exemption on Imported Medical Devices for Purpose of Kitting

To encourage local manufacturers of medical devices to kit their products to add value as well as to enhance their competitiveness, full import duty exemption is given on medical devices that are imported for the purpose of kitting or producing complete procedural sets, provided these medical devices are not manufactured locally.

Applications should be submitted to MIDA.

17.10.3 Exemption from Import Duty and Sales Tax on Machinery and Equipment

It is the policy of the government not to impose taxes on machinery and equipment used directly in the manufacturing process and not produced locally. No taxes are therefore imposed on most categories of machinery and equipment. In cases where the imported machinery and equipment are taxable but are not available locally, full exemption is given on import duty and sales taxes. For locally purchased machinery and equipment, full exemption is given on sales tax.

17.10.4 Exemption from Import Duty and Sales Tax on Spares and Consumables

Manufacturing companies qualify for import duty and sales tax exemptions on spares and consumables that are not produced locally. Exemption is selective and based on the following:

- the company's level of exports should be at least 80% of its production, or the spares and consumables have limited demand and do not have potential for domestic production, or
- the import duty on such items exceeds 5%

17.10.5 Exemption from Import Duty and Sales Tax for Outsourcing Manufacturing Activities

To reduce the cost of doing business and enhance competitiveness, owners of Malaysian brands with at least 60% Malaysian equity ownership who outsource manufacturing activities are eligible for:

a. Import duty and sales tax exemptions on raw materials and components used in the manufacturing of finished products by their contract manufacturers locally or abroad

b. Import duty and sales tax exemptions on semi-finished goods from their contract manufacturers abroad, to be used by their local contract manufacturer to manufacture the finished products.

Applications should be submitted to MIDA.

17.10.6 Exemption from Import Duty and Sales Tax for Maintenance Repair and Overhaul (MRO) Activities

Companies undertaking maintenance, repair and overhaul activities qualify for import duty and sales tax exemption on raw materials, components, machinery, and equipments, spares and consumables subject to each importation to be accompanied by certificates of parts and components issued by one of the following original equipment manufacturers (OEM) such as follows:

- FAA Form 8130-3 from the United States of America
- EASA Form 1 from the European Union
- Certificate of Compliance
- Certificate of Conformance
- Certificate from vendors
- Distributor certificate

Applications should be submitted to the Ministry of Finance.

17.10.7 Sales Tax Exemption

Manufacturers licensed under the Sales Tax Act 1972 qualify for sales tax exemption on the inputs for their manufacturing operations. Manufacturers with an annual sales turnover of less than RM100,000 are exempted from licensing and are thus exempted from paying sales tax on their output. However, these manufacturers can opt to be licensed and obtain sales tax exemption on their inputs instead.

Certain categories of goods are exempted from sales tax at both the input and output stages. These include all goods (inclusive of packaging materials) used in the manufacture of controlled articles, pharmaceutical products, milk products, batik fabrics, perfumes, beauty or make-up preparations, photographic cameras, wrist-watches, pens, computers and computer peripherals, parts and accessories, carton boxes/cases, products in the printing industry, agricultural or horticultural sprayers, plywood, re-treaded tyres, uninterruptible power systems, machinery, and manufactured goods for export.

Applications can be made to the Royal Customs Department.

17.10.8 Drawback on Import Duty, Sales Tax and Excise Duty

Under Section 99 of the Customs Act 1967, Section 29 of the Sales Tax Act 1972 and Section 19 of the Excise Act 1976, a drawback on import duty, sales tax and excise duty that have been paid may be claimed by a manufacturer if the parts, raw materials or packaging materials are used in the manufacture of goods for export within a year based on conditions stipulated in the Acts.

Excise duties are imposed on a selected range of goods manufactured in Malaysia . Goods which are subject to excise duties include intoxicating liquor, cigarettes containing tobacco, motor vehicles, playing cards and mahjong tiles.

The movement of goods from the principal customs area or licensed premises (for goods subject to excise duty) for use in the manufacture of other products by a factory in a Free Zone (FZ) or Licensed Manufacturing

Warehouse (LMW) or the islands of Langkawi, Labuan and Tioman is considered as exports from Malaysia.

Applications should be made to the nearest Royal Customs Department office where its factory is located.

17.11 Incentives for Export

17.11.1 Double Deduction for the Promotion of Exports

Certain expenses incurred by resident companies in seeking opportunities to export Malaysian manufactured and agricultural products and services, qualify for double deduction.

The eligible expenses are those incurred in:

- overseas advertising, publicity and public relations work
- supplying samples abroad, including delivery costs
- undertaking export market research
- preparing tenders for supply of goods overseas
- supplying of technical information abroad
- preparing exhibits and participation costs in trade/industrial exhibitions, virtual trade shows and trade portals and fares for overseas travel by company employees for business
- accommodation expenses up to RM300 per day and sustenance expenses up to RM150 per day for company representatives who travel overseas for business
- maintaining sales offices and warehouses overseas to promote exports
- hiring professional to design packaging for exports, subject to the company using local professional services
- undertaking feasibility studies for overseas projects identified for the purpose of tenders
- preparing architectural and engineering models, perspective drawings and 3-D animations for participating in competitions at international level. This is effective for the year of assessment 2005.

- participating in trade or industrial exhibitions in the country or overseas
- participating in exhibitions held in Malaysian Permanent Trade and Exhibition Centres overseas

Partnerships and sole proprietorships registered with the Companies Commission of Malaysia are also eligible for the above incentive. To qualify, they must provide the following professional services:

- legal
- accounting (including taxation and management consultancy)
- architectural (including town planning and lanscaping)
- engineering and integrated engineering (including valuation and quantity surveying)
- medical and dental

For pioneer companies, the deduction is accumulated and allowed against the post pioneer income.

17.11.2 Single Deduction for the Promotion of Exports

Certain expenses incurred by resident companies in looking for opportunities to export Malaysian manufactured and agricultural products and services qualify for single deduction. The eligible expenses are those incurred in:

- registration of patents, trade marks and product licensing overseas
- hotel accommodation for a maximum of three nights in providing hospitality to potential importers invited to Malaysia.

17.11.3 Double Deduction on Export Credit Insurance Premiums

Premium payments on export credit insurance qualify for double deduction.

17.11.4 Special Industrial Building Allowance for Warehouses

An annual allowance of 10% of qualifying capital expenditure is given for buildings used as warehouses for storing goods for export and re-export.

17.11.5 Double Deduction on Freight Charges

Manufacturers who ship their goods from Sabah or Sarawak to any port in Peninsular Malaysia qualify for double deduction on freight charges.

17.11.6 Incentive for the Implementation of RosettaNet

RosettaNet is an open Internet-based common business messaging standard for supply chain management link-ups with global suppliers.

To encourage local small and medium-scale companies to adopt RosettaNet in order to become more competitive in the global market, the expenditure and contributions incurred by companies in the management and operation of RosettaNet Malaysia and in assisting local small and medium-scale companies to adopt RosettaNet are eligible for income tax deduction.

The eligible expenditure and contributions are those on equipment (computers and servers) and salaries for full-time employees seconded to RosettaNet Malaysia; contribution of software, sharing of software and programming, as well as the training of the staff of local small and medium-scale companies to use RosettaNet.

Claims should be submitted to the IRB.

17.11.7 Double Deduction for the Promotion of Malaysian Brand Names

To promote Malaysian brand names, a company who is a registered proprietor of a Malaysian brand, or a company within the same group is eligible for double deduction on expenditure incurred in advertising the brand, subject to the following conditions:

i. the company must be owned more than 50% by the registered proprietor of the Malaysian brand name

ii. the deduction can only be claimed by one company in a year of assessment.

iii. the product meets export quality standards.

Claims should be submitted to the IRB.

17.12 Training Incentives

17.12.1 Double Deduction for Approved Training

Manufacturing and non-manufacturing companies that do not contribute to the Human Resource Development Fund (HRDF) qualify for double deduction on expenses incurred for approved training.

For the manufacturing sector, the training could be undertaken in-house or at approved training institutions. However, for the non-manufacturing sector, the training should be held only at approved training institutions. Approval is automatic when the training is at approved institutions.

For the hotel and tour operation business, training programmes, in-house or at approved training institutions, to upgrade the level of skills and professionalism in the tourism industry should be approved by the Ministry of Tourism.

Applications should be submitted to MIDA.

17.12.2 Incentive for Unemployed Graduate Training Scheme

To encourage private sector assistance in enhancing the employability of graduates, both public and unlisted companies under the supervision of the SC qualify for double deduction on allowances paid to participants of Unemployed Graduate Training Programme which are endorsed by the Securities Commission (SC). The scheme include the companies own in-house training programmes.

The incentive takes effect from 2 September 2006 until 31 December 2008 and the deduction is given for the period of 3 years.

Claims should be submitted to the IRB.

17.12.3 Deduction for Pre-Employment Training

Training expenses incurred before the commencement of business qualify for a single deduction. Nevertheless, companies must prove that they will employ the trainees.

Claims should be submitted to the IRB.

17.12.4 Deduction for Non-Employee Training

Expenses incurred in providing practical training to residents who are not employees of the company can be considered for single deduction.

Claims should be submitted to the IRB.

17.12.5 Deduction for Cash Contributions

Contributions in cash to technical or vocational training institutions that are not operating primarily for profit and those established and maintained by a statutory body qualify for single deduction.

Claims should be submitted to the IRB.

17.12.6 Human Resource Development Fund (HRDF)

Please refer to Chapter 5: "*Manpower for Industry*" *in* MIDA's *Investment Policy and Incentives*.

17.12.7 Special Industrial Building Allowance for Training

Companies that incur expenditure on buildings used for approved industrial, technical or vocational training can claim a special Industrial Building Allowance (IBA) of 10% for 10 years on qualifying capital expenditure for the construction or purchase of a building.

Claims should be submitted to the IRB.

17.13 Incentive for the Use of Environmental Protection Equipment

Companies using environmental protection equipment receive an initial allowance of 40% and an annual allowance of 20% on the capital expenditure incurred on such equipment. Thus, the full amount can be written off in three years.

Claims should be submitted to the IRB.

17.14 Donations for Environmental Protection

Donations to an approved organisation exclusively for the protection and conservation of the environment qualify for single deduction.

Claims should be submitted to the IRB.

17.15 Incentive for Employees' Accommodation

When a building is used for employees for the purpose of living accommodation in a manufacturing operation, an Approved Service Project, hotel or tourism business, a special Industrial Building Allowance of 10% of the expenditure incurred on the construction/purchase of the building is given for 10 years.

Claims should be submitted to the IRB.

17.16 Incentive for Employees' Child Care Facilities

Expenditure incurred for the construction/purchase of buildings for the purpose of providing child care facilities for employees are eligible for a special Industrial Building Allowance of 10% for 10 years.

A single deduction also applies to gifts in kind and cash to provide and maintain a child care centre for the benefit of employees.

Claims should be submitted to the IRB.

D Taxation

1.0 TAXATION IN MALAYSIA

Income of any person including a company, accruing in or derived from Malaysia or received in Malaysia from outside Malaysia is subject to income tax.

However, with effect from the year of assessment 2004, income received in Malaysia by any person other than a resident company carrying on business of banking, insurance or sea or air transport for a year of assessment derived from sources outside Malaysia is exempted from tax.

To modernise and streamline the tax administration system, the assessment of income tax was changed to a current year basis of assessment from the year 2000. The self-assessment system was implemented for companies in the year of assessment 2001 and, for businesses, partnerships, cooperatives and salaried groups, in the year of assessment 2004.

2.0 SOURCES OF INCOME LIABLE TO TAX

The following sources of income are liable to tax:

- Gains and profits from trade, profession and business
- Gains or profits from an employment (salaries, remunerations etc.)
- Dividends, interests or discounts
- Rents, royalties or premiums
- Pensions, annuities or other periodic payments
- Other gains or profits of an income nature

Chargeable income is arrived at after adjusting for allowable expenses incurred in the production of the income, capital allowances and incentives where applicable. Section 34 of the Income Tax Act 1967 allows specific provisions for bad or doubtful debts. However, no deduction for book depreciation is allowed although capital allowances are granted. Unabsorbed business losses may be carried forward indefinitely to offset against business income including companies with pioneer status, provided that the cessation of the period falls on or after 30 September 2005.

3.0 COMPANY TAX

A company, whether resident or not, is assessable on income accrued in or derived from Malaysia. Income derived from sources outside Malaysia and remitted by a resident company is exempted from tax, except in the case of the banking and insurance business, and sea and air transport undertakings. A company is considered a resident in Malaysia if the control and management of its affairs are exercised in Malaysia.

Effective from the year assessment of 2007, the company income tax rate be reduced to 27%, including for SMEs. This new rate also applies to the following entities:

i. a trust body

ii. an executor of an estate of an individual who was domiciled outside Malaysia at the time of his death; and

iii. a receiver appointed by the court

A company carrying on petroleum upstream operations is subject to a Petroleum Income Tax of 38%.

With effect from the year of assessment 2007, deduction for payment of zakat made by a company, cooperative society or trust body shall not exceed 2.5% of its aggregate income in the relevant year of assessment.

Deduction for contribution to:

i. the Government, State Government, local authority, or other institution approved by the Minister of Finance;

ii. sports activities approved by the Minister of Finance or Commissioner of Sports; and

iii. project of national interest approved by the Minister of Finance;

shall not exceed 7% of the aggregate income of the company in the relevant year of assessment.

4.0 PERSONAL INCOME TAX

All individuals are liable to tax on income accrued in, derived from or remitted to Malaysia. However, a non-resident individual will be taxed only on income earned in Malaysia. The rate of tax depends on the individual's resident status, which is determined by the duration of his stay in the country as stipulated under Section 7 of the Income Tax Act 1967. Generally, an individual

residing in Malaysia for more than 182 days in a calendar year is regarded as a tax resident.

Effective from the year of assessment 2004, income remitted to Malaysia by a resident individual is exempted from tax.

4.1 Resident Individual

A resident individual is taxed on his chargeable income after deducting tax reliefs at a graduated rate from 0% to 28%.

4.1.1 Personal Relief

The chargeable income of a resident individuals is computed by deducting the personal reliefs from the total income. The types of reliefs available are as follows:

Relief	**RM**
Self	RM8,000
Further self relief – disable	RM6,000
Wife/husband	RM3,000
Further wife/husband relief – disable	RM3,500
Medical expenses for parents	RM5,000
Medical expenses for taxpayer, spouse or children on serious diseases (include RM500 for medical examination)	RM5,000
Expenses on supporting equipment for disabled taxpayer, spouse, children or parent	RM5,000
Expenses on supporting unmarried children • Below 18 years of age; • Disabled child • Over 18 years old (pursuing tertiary education at university or college)	 RM1,000 RM5,000 RM4,000
Life insurance premiums or approved fund contributions	RM6,000
Insurance premiums for education or medical benefit	RM3,000

Relief	**RM**
Annuity premium on annuity purchased through EPF Annuity Scheme	RM1,000
Fee of acquiring law, accounting, technical, vocational, industrial, scientific or technological skills or qualification. Extended to Islamic Finance with effect from the year of assessment 2007	RM5,000
Purchase of books, journals and magazines and other similar publication (excluding newspapers) with effect from the year of assessment 2007	RM1,000
Purchase of computer for every three years with effect from the year of assessment 2007	RM3,000

4.1.2 Tax rebate

The tax liability of a resident individual is reduced by way of the following rebates:

(a) An individual with a chargeable income not exceeding RM35,000 enjoys a rebate of RM350. Where the wife is not working or the wife's income is jointly assessed, she also enjoys a further rebate of RM350. Similarly, a wife who is assessed separately will also enjoy a RM350 rebate, provided her chargeable income does not exceed RM35,000.

(b) Any fee paid to the government for the issue of an employment pass, visit pass or work permit.

4.2 Non-resident Individual

A non-resident individuals is liable to tax at the rate 28% without any personal relief. However, he can claim rebates in respect of levy paid to the government for the issuance of an employment work permit.

5.0 WITHHOLDING TAX

Non-resident individuals are subject to a final withholding tax of 10% on special classes of income such as:

a. in consideration of services rendered by the person or his employee in connection with the use of property or rights, installation of or operation of any plant, machinery or other apparatus;

b. in consideration of technical advice, assistance or services rendered in connection with technical management or administration; or

c. rent or other payments made under any agreement or arrangement for the use of any moveable property

With effect from 21 September 2002, no withholding tax should be applicable for income received in respect of the services (a) and (b) rendered or performed outside Malaysia.

In respect of withholding tax not paid, a penalty of 10% is imposed on the total payment made to a non-resident. However, effective on 2 September 2006, the 10% penalty on withholding tax be imposed on the amount of unpaid tax and not on the total payment made to a non-resident.

6.0 REAL PROPERTY GAINS TAX

Capital gains are generally not subject to tax in Malaysia. Real property gains tax is charged on gains arising from the disposal of real property situated in Malaysia or of interest, options or other rights in or over such land as well as the disposal of shares in real property companies. The tax rates for Malaysian citizens and permanent residents are as follows:

Disposal within 2 years	30%
Disposal in the 3rd year	20%
Disposal in the 4th year	15%
Disposal in the 5th year	5%
Disposal in the 6th year and thereafter - company	5%
- individual	nil

Citizens and permanent residents also enjoy an exemption of RM5,000 or 10% of the gains, whichever is the greater, besides a one-time tax exemption on the gains arising from the disposal of one private residence.

For non-citizens and non-permanent resident individuals, gains from the disposal of real property within 5 years are subject to tax at a flat rate of 30%, after which the tax rate will be 5%.

7.0 SALES TAX

Sales tax is a single stage tax imposed at the import or manufacturing levels. In Malaysia, manufacturers of taxable goods are required to be licensed under the Sales Tax Act 1972. Companies with a sales turnover of less than RM100,000 and companies with Licensed Manufacturing Warehouse (LMW) status are exempted from this licensing requirement. However, companies with a sales turnover of less than RM100,000 have to apply for a certificate of exemption from licensing.

Licensed manufacturers are taxed on their output while manufacturers that are not licensed or exempted from licensing need to pay tax on their inputs. To relieve small-scale manufacturers from paying sales tax upfront on their inputs, they can opt to be licensed under the Sales Tax Act 1972 in order to purchase tax-free inputs. With this, small-scale manufacturers can opt to pay sales tax only on their finished products.

Sales tax is generally at 10%. However, raw materials and machinery for use in the manufacture of taxable goods are eligible for exemption from the tax, while inputs for selected non-taxable products are also exempted.

Certain non-essential foodstuffs and building materials are taxed at 5%, general goods at 10%, liquor at 20% and cigarettes at 25%. Certain primary commodities, basic foodstuffs, basic building materials, certain agricultural implements and heavy machinery for use in the construction industry are exempted. Certain tourism and sports goods, books, newspapers and reading materials are also exempted.

8.0 SERVICE TAX

A service tax applies to certain prescribed goods and services in Malaysia including food, drinks and tobacco; provision of rooms for lodging and premises for meetings, conventions, and cultural and fashion shows; health services, and provision of accommodation and food by private hospitals.

The tax also applies to professional and consultancy services provided by accountants, advocates and solicitors, engineers, architects, surveyors (including valuers, assessors and real estate agents), advertising agencies, consultancy firms, management

service provider, insurance companies, motor vehicle service and repair centres, telecommunication services companies, security and guard services agencies, recreational clubs, estate agents, parking space services operators, courier service firms and veterinary doctors.

Professional services provided by a company to companies within the same group will be exempted from the current service tax of 5%. Courier services provided from a point within Malaysia to a destination outside Malaysia will also be exempted from the service tax of 5%.

Generally, the imposition of service tax is subject to a specific threshold based on an annual turnover ranging from RM150,000 to RM500,000 such as those;

i. car rental agencies licensed under the Commercial Vehicles Licensing Board Act 1987 having an annual sales turnover of RM300,000 and above;

ii. employment agencies having an annual sales turnover of RM150,000 and above;

iii. companies providing management services, including project management and coordination services, having an annual sales turnover of RM150,000 and above;

iv. hotels having more than 25 rooms and restaurants within such hotels are also subject to this tax.

9.0 IMPORT DUTY

In Malaysia, import duty is mostly imposed ad valorem although some specific duties are imposed on a number of items. Nevertheless, over the last few years, Malaysia has abolished import duties on a wide range of raw materials, components and machinery.

Furthermore, Malaysia is committed to the ASEAN Common Effective Preferential Tariffs (CEPT) scheme under which import of all industrial goods traded within ASEAN countries are imposed import duties of 0% to 5%.

10.0 EXCISE DUTY

Excise duties are levied on selected products manufactured in Malaysia namely cigarettes, tobacco products, alcoholic beverages, playing cards, mahjong tiles and motor vehicles.

11.0 CUSTOMS APPEAL TRIBUNAL AND CUSTOMS RULING

Customs appeal tribunal (CAT) is an independent body, establish to decide on appeals against the decision of the Director General of Customs pertaining to matters under the Custom Act 1967, Sales Tax Act 1972, Service Tax Act 1975 and Excise Act 1976.

In addition, Customs Ruling is introduced under the Custom Act 1967, Sales Tax Act 1972, Service Tax Act 1975 and Excise Act 1976 to provide business sectors with the elements of certainty and predictability in planning their business activities.

The ruling issued by the Customs and agreed by the applicant shall be legally binding both parties for a specific period time. The main features of Customs Ruling are:

i. applications for Customs Ruling can be made with respect to classification of goods, determination of taxable services and the principles of determination of value of goods and services;

ii. application should be made in writing together with sufficient facts and prescribed fee;

iii. applications may be made before the goods are imported or the services are provided upon which Customs will issue an advance ruling.

12.0 DOUBLE TAXATION AGREEMENT

Double Taxation Agreement (DTA) is an agreement between two countries seeking to avoid double taxation by defining the taxing rights of each country with regard to cross border flows of income and providing for tax credits or exemptions to eliminate double taxation.

The objectives of Malaysian DTA are as follows:

i. to create a favourable climate for both inbound and outbound investments;

ii. to make Malaysia 's special tax incentives fully effective for taxpayers of capital exporting countries;

iii. to obtain a more effective relief from double taxation compared to relief gained under unilateral measures; and

iv. to prevent evasion and avoidance of tax

Currently, effective DTAs are as follows:

Albania
Argentina*
Australia
Austria
Bahrain
Bangladesh
Belgium
Canada
China
Czech Republic
Denmark
Egypt
Fiji
Finland
France
Germany
Hungary
India
Indonesia
Ireland
Italy
Japan
Jordan
Korea, South
Lebanon
Luxembourg
Malta
Mauritius
Mongolia
Netherlands
New Zealand
Norway
Pakistan
Papua New Guinea
Philippines
Poland
Romania
Russia
Saudi Arabia*
Seychelles
Singapore
Sri Lanka
Sweden
Switzerland
Thailand
Turkey
United Arab Emirates
United Kingdom
United States of America*
Uzbekistan
Vietnam

As for Taiwan, double taxation relief was given to Taipei Economic and Cultural Office in Malaysia by way of Income Tax Exemption Order namely;
i. P.U.(A) 201 (1998)
ii.P.U.(A) 202 (1998)

For more information on DTAs, please contact:

International Tax Division 1
Inland Revenue Board of Malaysia
3rd Floor, Block 9 Government Office Complex
Jalan Duta, 50600 Kuala Lumpur Malaysia
Tel: (603) 6203 2330 Fax: (603)6201 9884
Email: lhdn_int@hasil.org.my

* *Limited Agreement.*

E Banking, Finance and Foreign Exchange Administration

1.0 THE BANKING SYSTEM IN MALAYSIA

The banking system, comprising commercial banks, merchant banks and Islamic banks, is the primary mobiliser of funds and the main source of financing to support economic activities in Malaysia.

1.1 The Central Bank

The central bank, Bank Negara Malaysia, is responsible for maintaining monetary stability and ensuring a sound financial system. Towards this, Bank Negara Malaysia regulates and supervises the Malaysian banking system, selected development finance institution and insurance companies. Bank Negara Malaysia also issues the Malaysian currency (the Ringgit), acts as a banker and economic and financial adviser to the Government, administers the country's foreign exchange control regulations, and acts as lender of last resort to the banking system.

1.2 Financial Institution

The commercial banks are the main players in the banking system. As at the end of December 2006, there were ten domestic and 13 locally incorporated foreign commercial banks operating through a network of 1,963 branches across the country. Five of the domestic banks have presence in 18 countries through branches, subsidiaries and joint ventures. In addition, 21 foreign banks maintain representative offices in Malaysia . They do not conduct normal banking business but provide liaison services and facilitate information exchange between business interests in Malaysia and their counterparts.

In 2004, the legislative framework was amended to enable rationalisation of retail banking business through the consolidation of the commercial banks and finance companies within the same banking group. This iniative was introduced to enable the domestic banking groups to streamline their businesses and reap benefits from economies of scale. To date, all domestic banking groups have rationalised their commercial banking and finance companies businesses.

Currently, there are ten merchant banks, providing a wide range of services through 19 branches. Merchant banks assume role in the short-term money market and capital raising activities including underwriting, loans syndication, corporate finance and management advisory services, arranging for the issue and listing of shares, as well as investment portfolio management. With the introduction of the framework for investment banks, the mergers between merchant banks, stock broking companies and discount houses will result in the creation of investment banks that are more effective, efficient and resilient in the changing domestic and international economic environment. The investment banks will continue to be able to conduct activities based on the types of licences approved prior to rationalisation.

At present, there are ten Islamic banks which provide the full range of financial services based on Shariah principles. In addition, eight conventional banks also provide Islamic banking services through a dedicated Islamic window. Islamic financial products and services are made available via 548 branches throughout the country.

In addition, there are 681 scheduled institutions comprising building credit companies, development finance companies, factoring companies and leasing companies that provide credit and financing facilities to the public.

Malaysia has several development financial institutions (DFIs) that were set up with specific objectives to develop and promote strategic economic sectors, such as the manufacturing and exports sectors, small and medium enterprises (SMEs), as well as the agriculture, infrastructure and maritime sectors. These DFIs complement the banking institutions by providing a range of financial and non-financial services to support development of the strategic sectors. These include the provision of medium to long-term loans, equity capital and guarantees for loans, as well as consulting and advisory services in the identification and development of new projects, besides financial, technical and managerial advice and assistance.

The merger of Export-Import Bank of Malaysia and Malaysia Export Credit Insurance Berhad in December 2005 has resulted in the establishment of Exim Bank, which finances and facilitates the export and import of goods, services and overseas projects with emphasis on non-traditional markets; as well as to provide insurance for export credit, export finance and overseas investment insurance and guarantee facilities. Meanwhile, the

SME Bank or 'Bank Perusahaan Kecil dan Sederhana Malaysia Berhad' was established in October 2005 to nurture and promote development of the SMEs, by providing a broad range of financial and ancillary services.

1.3 Malaysia as an International Islamic Financial Centre

The international financial community has recognised Malaysia's effort in developing and promoting Islamic banking and finance. The measures are being implemented in accordance with the Financial Sector Master Plan and Capital Market Master Plan. Among these are initiatives and efforts to ensure rapid, progressive and comprehensive development of the domestic Islamic financial system; financial liberalisation of Islamic banking and takaful and growing foreign participation with several international names; and global integration of the Islamic financial system with active involvement and contribution in developing Islamic financial market.

In this regard, the Malaysian Government has embarked on a strategic initiative through the financial regulators to create a vibrant, innovative and competitive international Islamic financial services industry in Malaysia to further strengthen Malaysia 's position as an International Islamic Financial Centre (MIFC). The MIFC initiative is supported by high-calibre human capital, a world class financial infrastructure and practices that meet the best international standards. MIFC comprises a diversified range of financial institutions operating from anywhere in Malaysia which offer Islamic financial products and services in any currency to non-residents and residents, in the following niche activities:

- origination, distribution and trading of Islamic capital market and treasury instruments;
- Islamic fun and wealth management services;
- International currency Islamic financial services (including deposits and financing); and
- takaful and retakaful.

Under the MIFC initiative, efforts are also being intensified towards positioning Malaysia as a centre of excellence for Islamic banking and finance education, training, consultancy and research.

1.3.1 MIFC to Foreign Players

To attract more players in the Malaysian financial system, these measures have been undertaken:

i. Issuance of new licences under the Islamic Banking Act 1983 to qualified foreign and Malaysian financial institutions to conduct the full range of Islamic banking business with non-residents and residents in international currencies. The new entity is termed licensed International Islamic Bank (IIB) and will enjoy full income tax exemption for the period of 10 years under the Income Tax Act 1967 for the year of assessment 2007.

ii. Issuance of new registrations under the Takaful Act 1984 to qualified foreign and Malaysian financial institutions to conduct the full range of takaful business with non-residents and residents in international currencies. The new entity is termed International Takaful Operator (ITO) and will enjoy similar income tax exemption as that granted to IIB.

iii. Provide greater flexibility to the Labuan offshore Islamic banks, offshore Islamic Investment Banks, offshore takaful companies and Islamic division of offshore banks and offshore insurance companies in their business operations by allowing the opening of operation offices anywhere in Malaysia without having the need to maintain physical presence in Labuan.

iv. Foreign equity participation in Malaysian Islamic banks and takaful operators is allowed up to 49% of total equity.

v. Fund managers licensed under the Securities Industry Act 1983 are given 100% income tax exemption on management fees for 10 years for managing funds of foreign investors, based on Shariah principle (effective from the year of assessment 2007).

vi. Tax exemption granted on profit income received by non-residents from financial institutions established under the Islamic Banking Act 1983; and

vii. Tax incentives are given to the investors of Real Estate Investment Trusts (REITs) in Malaysia as follows:

a) local and foreign non-corporate investors that receive dividends from REITs listed on the Bursa Malaysia are subject to a final withholding tax of 15% for 5 years;

b) foreign institutional investors especially pension funds and collective investments funds that received dividends from REITs listed on the Bursa Malaysia are subject to a final withholding tax of 20% for 5 years;

c) REITs are exempted from tax on all income if 90% of total income is distributed to the investors; and

d) if the 90% distribution is not complied, all the investors are eligible to claim tax credit.

2.0 EXPORT CREDIT REFINANCING (ECR)

Export Credit Refinancing (ECR) is a scheme under which the Exim Bank provides short-term financing at competitive interest rates to direct or indirect exporters through the commercial banks. The facility is offered by commercial banks which are then refinanced by Exim Bank.

A direct or indirect exporter who wishes to use the ECR facility should arrange for an ECR credit line with the commercial banks and then obtain approval for access to the ECR facilities from EXIM Bank.

2.1 Eligibility Criteria

The ECR facility is available to direct exporters and indirect exporters who are involved directly or indirectly in export activities and have obtained ECR credit line from the commercial banks.

2.2 Type of Facilities

i. The pre-shipment ECR facility is a loan available to direct or indirect exporters to finance their purchases from domestic and/or foreign suppliers prior to shipment of goods to overseas buyers.

ii. The post-shipment ECR facility is an advance or financing to direct exporters after the shipment of goods to the overseas buyers.

2.3 Method of Financing

Two methods of financing are available for exporters under the pre-shipment ECR i.e. the order-based method and certificate of performance (CP) method.

Under the order-based method, the pre-shipment ECR financing is against the export or purchase orders whilst under the CP method. The pre-shipment financing is against the CP issued by the Exim Bank.

The method of financing under the post-shipment ECR facility is through bills discounting and the financing is against a set of export documents presented to the commercial banks.

2.4 Period and Amount of Financing

The maximum period of financing under the Pre-shipment ECR and Post-Shipment ECR is four (4) months and six (6) months respectively.

Under the order-based method, exporters can obtain financing for 95 % of the value of their export order, while under the CP method, the amount of financing is subject to the CP limit granted by Exim Bank.

The minimum and maximum amount of financing per facility under the ECR facility is RM10,000 and RM50 million respectively.

3.0 THE SECURITIES MARKET IN MALAYSIA

3.1 Securities Commission

The Securities Commission (SC), established in 1993, regulates the capital markets in Malaysia pursuant to the Securities Commission Act 1993, Securities Industry Act 1983, Futures Industry Act 1993 and Securities Industry (Central Depositories) Act 1991. Another prong of the SC's role is to facilitate the orderly development of an innovative and competitive capital market in Malaysia. The SC is a self-funding statutory body with investigative and enforcement powers, and reports to the Minister of Finance.

The SC regulates the offerings and issues of securities by public companies, and debentures by private companies. It also regulates the listing of such securities on Bursa Malaysia, as well as matters relating to take-overs and mergers of companies, and unit trust schemes. It is the sole approving and registering authority for prospectuses of all securities (other than unlisted

recreational clubs). The SC supervises exchanges, clearing houses and central depositories, and is also responsible for licensing and supervising all licensed persons.

The SC introduced the Capital Market Masterplan (CMP) in 2001. This is a comprehensive plan that charts the strategic positioning and future direction of the Malaysian capital market for the next 10 years. The Masterplan prioritises the immediate needs of the capital market and charts its direction and long-term growth in anticipation of global developments to its environment.

3.2 Bursa Malaysia Berhad

The first formal stock exchange, the Malayan Stock Exchange, was set-up in 1960. The board system with trading rooms, in Singapore and Kuala Lumpur, linked by direct telephone lines into a single market with the same shares listed at a single set of price of both boards, was established in 1961. With the separation of Singapore from Malaysia in 1965, the Stock Exchange of Malaysia and Singapore (SEMS) was established. However, with the termination of currency interchangeability between Malaysia and Singapore in 1973, SEMS was separated into two i.e. the Kuala Lumpur Stock Exchange (KLSE) and the Stock Exchange of Singapore.

Demutualised pursuant to the Demutualisation Act, the KLSE was converted into a public company limited by shares on January 5, 2004. Upon the conversion, KLSE vested and transferred the securities exchange business to a wholly-owned subsidiary, Bursa Malaysia Securities Sdn Bhd (Bursa Securities), and became an exchange holding company and was renamed Bursa Malaysia Berhad on April 14, 2004.

Bursa Malaysia operates a fully integrated exchange, offering the complete range of exchange-related services, including trading, clearing, settlement and depository services. Bursa Malaysia also provides information services relating to the Malaysian securities and derivatives markets.

Bursa Malaysia today is one of the largest bourses in ASEAN, with 1023 companies listed (as at mid January 2006). These companies, which mirror the diversity and scope of the Malaysian economy, are categorised into 15 different sectors representing over 50 different economic activities from Plantation, Mining, Trading/Services, to Technology, Infrastructure and Finance, to name a few.

3.2.1 Bursa Malaysia Corporate Governance

In a demutualised structure, a single Board oversees Bursa Malaysia Group. The Board has a balanced representation structure consisting of: Public Interest directors, Independent directors, Shareholder directors and the Chief Executive Officer to safeguard the interest of all stakeholders. The corporate governance practices of Bursa Malaysia are consistent with the aspirations and objectives as set out in the Code of Corporate Governance.

3.2.2 Bursa Malaysia Group of Companies

Bursa Malaysia's Group of Companies comprises an exchange holding company and various subsidiaries which own and operate various businesses through the following business units:

(a) Exchange Business Unit

Bursa Malaysia's exchange business units comprise of the three exchanges:

- Securities Exchange

  The markets which make up the Securities Exchange are the Main Board, Second Board and MESDAQ Market. The largest of these is the Main board, with 646 companies listed, Second Board with 268 companies listed and MESDAQ Market with 109 companies listed, representing a total market valuation of RM703.70 billion as at mid January 2006. This exchange is operated by Bursa Malaysia Securities (Bursa Securities).

- Derivatives Exchange

  The derivative exchange offers futures and options contracts covering financial, equity and commodity-related instruments. As at December 2005, seven types of future contracts and one type of option contract were available for trading. These represented a total open interest in December 2005 of 84,848 contracts. This exchange is operated by Bursa Malaysia Derivatives (Bursa Derivatives).

- Offshore Exchange

  The offshore exchange is an international offshore financial exchange based in Labuan, Malaysia's international offshore financial centre. As at December 2005, 21 conventional bonds, 4 mutual funds and 5 Syariah compliant certificates (Sukuk) and 1 preference shares were listed on the Offshore Exchange, representing market capitalisation of USD11.5 billion. This exchange is operated by Labuan International Financial Exchange Inc (LFX).

(b) Clearing, Settlement and Depository Unit

The clearing, settlement and depository services are offered through Bursa Malaysia Securities Clearing Sdn Bhd, Bursa Malaysia Derivatives Clearing Bhd and Bursa Malaysia Depository Sdn Bhd (Bursa Depository)

(c) Information Service Business Unit

The information services business unit compiles and disseminates comprehensive information on prices, trading and indices for listed securities on real-time or delayed basis. It also develops and provides information on products and services for subscribers. This business is operated through Bursa Malaysia Information Sdn Bhd.

3.2.3 Participants

(a) Stockbroking Companies

Currently, there are 37 stockbroking companies (including five foreign brokers) offering services in the dealing of securities listed on Bursa Securities. Of these, 6 stockbroking companies have been granted universal broker status. Universal brokers are able to offer a full scope of integrated capital market services which are corporate finance, debt securities trading and share dealing. As at the end of 2005, there were 58 branches.

(b) Trading Participants

A Trading Participant is a company which owns at least one(1) Preference Share to conduct business as a futures broker licensed under the Futures Industry Act and carrying on trading in Contracts traded on the Bursa Derivatives. A Trading Participant has to be registered with the Securities Commission. Currently, there are 15 Trading Participants.

3.2.4 Investor Protection

In the interest of protecting investors, Bursa Malaysia currently maintains three compensation funds, namely Compensation Fund of Bursa Securities, the Fidelity Fund of Bursa Derivatives and the Compensation Fund of Bursa Depository to compensate investors who have suffered losses falling within the circumstances specified under the relevant securities laws and rules. The funds are administered by the Compensation Committee.

3.2.5 Risk Management

Bursa Malaysia has put in place an enterprise risk management (ERM) framework with the aim of managing and controlling risks appropriately for the Group. Key risks are identified and ranked for likelihood of occurrence and magnitude of impact with appropriate action plans developed to manage significant residual risks.

4.0 OFFSHORE FINANCIAL SERVICES

4.1 Labuan Offshore Financial Services Authority (LOFSA)

The Labuan Offshore Financial Services Authority (LOFSA) is a one-stop regulatory body that spearheads and coordinates the development and promotion of Labuan as an International Offshore Financial Centre (IOFC).

It streamlines government machinery for supervising the offshore financial services industry, undertakes research and development work, and improves operational efficiency, thus creating a conducive business environment for the IOFC.In addition, LOFSA has also developed Islamic finance as one of the core areas and Labuan IOFC is now recognised as a leading offshore centre for conventional and Islamic financial activities.

Offshore business activities undertaken by Labuan offshore companies can be segregated into trading and non-trading

activities. Offshore trading activities include banking, insurance, fund management, broking and other trade related activities. Offshore non-trading activities refer to activities relating to holding of investments in securities, stocks, shares, loans, deposits and immovable properties by an offshore company on its own behalf.

The Labuan IOFC is not subject to the exchange control rules and regulations of Malaysia as the nature of offshore business in Labuan is basically foreign currency-based and conducted with non-residents.

The incorporation and registration of companies to conduct business in Labuan can be done in LOFSA. LOFSA oversees and supervises offshore industries such as banking, insurance, securities, and trust and fund management. The Labuan International Financial Exchange is also under the purview of LOFSA.

4.2 Incentives for Offshore Financial Services

4.2.1 Minimum Tax

- An offshore company carrying on an offshore trading activity can opt to pay tax each year at the rate of 3% of its net audited profits or a fixed tax of RM20,000.
- An offshore company conducting non-trading activities is subject to zero tax.

4.2.2 Abatement of Tax for Professional Services

- Any person or his employee or a company rendering qualifying professional services to an offshore company in Labuan is exempted from income tax up to 65% of the statutory income. This includes legal, accounting, financial and secretarial services.

4.2.3 Abatement of Tax For Employment

- Non-citizens employed in a managerial capacity in an offshore company in Labuan enjoy income tax exemption up to 50% of the gross employment income.
- Non-citizen trust officers working in a Labuan trust company enjoy income tax exemption of up to 50% of gross employment.

4.2.4 Exemptions from Income Tax

The following exemptions are available for offshore companies under the Income Tax Act 1967:

- Dividends paid to a resident or a non-resident person by a Labuan offshore company
- Dividends received from a Malaysian Domestic Company which are paid out of dividends received from a Labuan offshore company.
- 100% tax exemption on Director's fees paid to a non-citizen Director
- 50% tax exemption on Labuan and housing allowances paid to Malaysian citizens working in an offshore company

Offshore Companies are exempted from withholding tax for the following :

- Interest paid to a resident person or a non-resident who is not engaged in the business of banking, finance or insurance
- Interest paid to a non-resident person or another offshore company unless the interest accrues to a banking, finance company or insurance business by a non-resident
- Lease rental paid to non-resident
- Technical or management fee paid to a non-resident or another offshore company
- Royalty to a non-resident person or another offshore company
- Distributions made by an offshore trust to non-resident beneficiaries

4.2.5 Stamp Duty Exemption

Offshore business transactions by an offshore company (including M&A of an offshore company and transfer of shares in an offshore company) are exempted from payment of stamp duty.

5.0 EXCHANGE CONTROL PRACTICE

Malaysia has always maintained a liberal foreign exchange administration policy. The implementation of foreign exchange administration policy in Malaysia supports the monitoring of capital flows into and out of the country to preserve its financial and economic stability. As part of Malaysia's continuous efforts to increase efficiency and reduce cost of doing business, the foreign exchange administration policies have been progressively liberalised and simplified.

For foreign exchange administration purposes, the definitions of the following terms are provided to facilitate investors:

(i) Residents comprise:

- Citizens of Malaysia (excluding persons who have obtained permanent resident status of a territory outside Malaysia and are residing abroad)
- Non-citizens who have obtained permanent resident status in Malaysia and are residing permanently in Malaysia
- Persons, whether body corporate or unincorporated, registered or approved by any authority in Malaysia

(ii) Non-residents comprise:

- Persons other than residents
- Overseas branches, overseas subsidiaries, overseas regional offices, sales offices, representative offices of resident companies
- Embassies, Consulates, High Commissions, supranational or international organisations recognised by the Government of Malaysia
- Malaysian citizens who have obtained permanent resident status of a territory outside Malaysia and are residing outside Malaysia

(iii) Foreign currency assets include:

Lending to non-residents, placement of deposits with licensed onshore banks (licensed commercial banks and Islamic banks), approved merchant banks or offshore banks, and foreign currency products offered by licensed onshore banks, approved merchant banks and other entities approved by the Controller of Foreign Exchange (Controller).

(iv) Corporate Group:

It refers to a group of companies in Malaysia with parent-subsidiary relationship.

(v) Domestic ringgit credit facilities include:

Any ringgit advance, loan, trade financing, hire purchase, factoring, leasing facilities, redeemable preference shares or similar facility in whatever name or form, other than:

(a) Trade credit terms extended by a supplier for all types of goods and services.

(b) Forward exchange contracts entered into with licensed onshore banks.

(c) One personal housing loan and one vehicle loan obtained from residents.

(d) Credit card and charge card facilities.

(e) Inter company borrowing within a corporate group.

5.1 Investment and Financial Activities by Non-residents

Non-residents are free to invest in Malaysia in any form. There are no restrictions on the repatriation of capital, profits and income earned from Malaysia by non-residents including salaries, wages, royalties, commissions, fees, rental, interest, profits or dividends.

To complement the non-residents' investment strategy, non-residents may obtain financing from licensed onshore banks both in ringgit and foreign currency and enter into foreign exchange contracts with licensed onshore banks to actively manage currency risks arising from investments in ringgit assets. Non-residents are also free to convert foreign currency into ringgit and vice versa.

(i) Foreign Direct Investment

A non-resident may incorporate a company, register a branch, and/or establish sole proprietorship or partnership in Malaysia with the Companies Commission of Malaysia. Please refer to http://www.ssm.com.my/ for details.

Such businesses in Malaysia are resident entities irrespective whether the businesses are controlled by residents or non-residents.

A non-resident is free to purchase any ringgit equity irrespective whether listed or not listed on the Malaysian stock exchange.

(ii) Portfolio Investment

A non-resident is free to make any portfolio investments, including purchasing of any ringgit debt securities issued by non-residents in Malaysia.

(iii) Investment in Immovable Properties

A non-resident is free to purchase immovable properties (residential and commercial) in Malaysia. Such purchases should comply with guidelines issued by the Foreign Investment Committee (FIC). Please refer to http://www.epu.jpm.my/ for details.

A non-resident is free to obtain any number of loans from residents to finance the purchase of immovable properties in Malaysia.

A non-resident is required to obtain the prior approval of the Controller for financing the purchase of land only.

Loans by domestic financial institutions are determined by the financial institutions' own policies and the FIC guidelines.

(iv) Opening of Account in Ringgit (External Account)

External Account is a ringgit account belonging to a non-resident or where the beneficiary of the funds in the account is a non-resident.

A non-resident may open and maintain any number of External Accounts with any onshore financial institutions.

There is no restriction on the amount of ringgit funds to be retained in the External Accounts.

The ringgit funds in an External Account can be used for payments to residents for purchase of ringgit assets or services provided in Malaysia .

Funds in the External Account can be converted into foreign currency with the licensed onshore banks and repatriated at any time.

(v) Opening of Account in Foreign Currency

There are no restrictions for a non-resident to open and maintain any number of foreign currency accounts with licensed onshore banks and licensed merchant banks in Malaysia.

There is also no restriction on the amount to be retained in the accounts. Funds in the accounts may be used for any purpose and can be converted into ringgit with licensed onshore banks or may be repatriated at any time.

(vi) Lending to Residents in Ringgit

A non-resident may lend in ringgit to a resident who has obtained prior permission of the Controller.

(vii) Lending to Residents in Foreign Currency

A non-resident may lend in foreign currency to a resident as long as the resident's total foreign currency credit facilities are within permitted limits.

5.1.1 Payment for Investment

A non-resident may pay in foreign currency or in ringgit from own External Account for any investments in Malaysia.

5.1.2 Borrowing from Residents in Ringgit

A non-resident is free to obtain ringgit credit facilities:

(i) From licensed onshore banks in Malaysia up to an aggregate of RM10 million for use in Malaysia if the non-resident is not a correspondent bank or a stockbroking company or a custodian bank.

(ii) From licensed onshore banks of any amount on intra-day and overnight basis if a non-resident is a stock broking company or a custodian bank. The facilities are strictly for financing funding gaps due to settlement timing mismatches, unforeseen or inadvertent/technical administration errors or delays due to time zone difference in relation to settlement of ringgit instruments through the Real Time Electronic Transfer of Funds and Securities (RENTAS) system and on Bursa Malaysia (stock exchange of Malaysia).

(iii) From resident stockbroking companies for margin financing by the non-resident which is not a correspondent bank or a stockbroking company.

(iv) From resident insurers up to the cash surrender value of the insurance policies purchased by the non-resident.

(v) From a non-bank resident up to RM10,000.

(vi) From residents, including financial institutions, any number of loans for purchase of immovable properties in Malaysia.

5.1.3 Borrowing from Residents in Foreign Currency

A non-resident may obtain any amount of foreign currency credit facilities from licensed onshore banks, approved merchant banks and non-bank residents with no domestic ringgit credit facilities.

5.1.4 Issuance of Securities

A non-resident may issue the following ringgit securities registered in Malaysia to residents and non- residents:

(i) Ordinary shares, including bonus and right issues; and

(ii) Irredeemable preference shares

Proceeds of any amount from the issuance of ordinary shares through an initial public offering on the Main Board of Bursa Malaysia may be used to finance the non-resident's operations outside Malaysia.

Foreign governments, agencies or national corporation of the foreign governments, Multilateral Development Banks, Multilateral financial Institutions or foreign multinational corporations may also issue ringgit or foreign currency denominated bonds in Malaysia to residents and non-residents based on merit of each case.

5.1.5 Hedging of Investments

A non-resident is free to enter into a foreign exchange contract on spot or forward basis with a licensed onshore bank for the following:

(i) To buy ringgit to make payment for purchase of ringgit asset.

(ii) To sell ringgit funds arising from sale of ringgit asset.

All forward contracts entered into by non-resident with a licensed onshore bank or overseas branches of its banking group must be with firm underlying commitment.

The maturity date of the foreign exchange contracts should be the expected date of payment or receipt of the committed transaction.

The total amount of the foreign exchange contracts should not exceed the expected sum of payments or receipts of the committed transaction.

5.1.6 Sale of Investments

A non-resident may sell any investments in Malaysia, including securities not listed on Bursa Malaysia, to a resident or to a non-resident.

A resident may pay or settle the purchase of the ringgit assets from the non-resident seller in ringgit or in foreign currency.

A non-resident purchaser may also pay or settle the purchase of ringgit assets from the non-resident seller in foreign currency or ringgit from own External Account.

5.1.7 Repatriation of Funds

A non-resident is free to repatriate any amount of own funds in Malaysia any time, including capital, divestment proceeds, profits, dividends, rental, fees and interest arising from investments in Malaysia.

5.1.8 Import and Export of Currency by Non-residents Travellers

A non-resident traveller may bring in or out of Malaysia ringgit notes up to RM1,000.

A non-resident traveller may also bring any amount of foreign currency notes including traveller's cheques into Malaysia. Declaration in the Arrival/Departure Card (IMM.26) issued by the Immigration Department is only required for amount of foreign currency notes and travellers' cheques exceeding USD10,000. A non-resident traveller may bring out foreign currency notes and traveller's cheques up to the amount brought into the country.

5.2 Investment and Financial Activities by Residents

To encourage better risk management activities, promote cost competitiveness and the use of onshore service providers, residents are given the flexibility to manage their own funds onshore and offshore. Residents may enter into risk management arrangements with licensed onshore banks in Malaysia.

5.2.1 Import and Export of Goods and Services

(i) Payment of Good and Services

A resident may pay a non-resident any amount in foreign currency, other than the currency of the State of Israel, for import of goods and services.

A resident must receive payment for export of goods and services in foreign currency, other than the currency of the State of Israel, from a non-resident.

Proceeds arising from export of goods must be received and repatriated to Malaysia by the resident as per the sales contract which should not exceed six months from the date of export.

Proceeds arising from export of goods cannot be offset against other foreign currency payables to non-residents.

Payments by a resident to another resident for goods and services must be made in ringgit.

(ii) Hedging of Payments or Receipts

A resident may hedge foreign exchange exposures arising from:

i. Payments due to a non-resident for import of goods and services.

ii. Receipts due from a non-resident for export of goods and services.

iii. Anticipation of payments or receipts for import or export of goods and services provided to a non-resident.

All hedging activities by residents may be undertaken only with licensed onshore banks or approved merchant banks in Malaysia.

(iii) Retention of Foreign Currency Proceeds

Upon receiving proceeds from export of goods and services, the resident may sell the foreign currency for ringgit or another foreign currency or retain in foreign currency accounts maintained with licensed onshore banks or approved merchant banks.

There are no limits imposed on the foreign currency accounts.

(iv) Reporting on Import or Export of Goods

There is no requirement to report to the Controller for any import of goods from non-residents.

Only resident exporters with annual gross export proceeds exceeding the equivalent of RM50 million are required to submit quarterly reports to the Controller.

5.2.2 Investment in Foreign Currency Assets

(i) Payment for Investment in Foreign Currency Assets

A resident, individual or company, without domestic ringgit credit facilities is free to invest in any foreign currency assets. These investments can be financed with:

Resident company:

i. Any amount of own foreign currency funds retained in accounts in Malaysia or offshore;

ii. Any amount of own ringgit funds converted into foreign currency, including proceeds from the listing of shares through an initial public offering on the Main Board of Bursa Malaysia; and

iii. Up to RM100 million equivalent in aggregate using foreign currency borrowing

Resident individual:

i. Any amount of own foreign currency funds retained in accounts in Malaysia or offshore;

ii. Any amount of own ringgit funds converted into foreign currency; and

iii. Up to RM10 million equivalent in aggregate using foreign currency borrowing

A resident, individual or company, with domestic ringgit credit facilities may invest any amount in foreign currency assets as follows:

Resident company:

i. Any amount of own foreign currency funds retained in accounts in Malaysia or offshore;

ii. Any amount of proceeds from the listing of shares through an initial public offering on the Main Board of Bursa Malaysia; and

iii. Up to an equivalent of RM50 million in aggregate per calendar year on a corporate group basis from conversion of ringgit funds into foreign currency; and

iv. Up to RM100 million equivalent in aggregate on a corporate group basis using foreign currency borrowing.

Resident individual:

i. Any amount of own foreign currency funds maintained in Malaysia or offshore;

ii. Up to an equivalent of RM1 million in aggregate per calendar year from conversion of ringgit into foreign currency;

iii. Up to RM10 million equivalent in aggregate using foreign currency borrowing.

For a resident company intending to invest in foreign currency assets:

(a) Shareholders' funds of the company must be at least RM100,000.

(b) The company must also be in operation for at least one year.

This is irrespective whether the company has or does not have domestic ringgit credit facilities.

A resident individual may also convert ringgit into foreign currency for investment in foreign currency securities under the Employee Share Option/ Purchase Scheme offered by overseas parent or related companies of the individual's employer.

In addition, a resident institutional investor may invest in foreign currency assets for resident and non-resident clients as follows:

(a) Unit trust management company:

i. The full amount of net asset value (NAV) attributed to non-residents.

ii. 50% of NAV attributed to residents.

b) Asset/fund management company for:

i. The full amount of funds placed by non-resident clients.

ii. The full amount of funds placed by resident clients with no domestic ringgit credit facilities.

iii. 50% of funds placed by resident clients with domestic ringgit credit facilities.

Funds from different unit trust management companies and fund managers may be pooled to benefit from economies of scale when purchasing foreign currency assets.

A resident insurance company may invest in foreign currency assets up to 5% of the company's margin of solvency and 50% of the NAV of investment-linked funds marketed.

A resident takaful operator may invest in foreign currency assets up to 5% of the operator's total assets and 50% of the NAV of investment-linked funds marketed.

Payment between residents in foreign currency for settlement of foreign currency financial products offered onshore is allowed.

(ii) Hedging of Investment in Foreign Currency Assets

A resident may hedge foreign exchange risks arising from payment for permitted investments and the value of existing foreign currency assets. Such hedging may be undertaken with licensed onshore banks or approved merchant banks in Malaysia.

(iii) Reporting of Overseas Investments in Foreign Currency Assets

A resident with outstanding overseas investments in excess of an equivalent of RM50 million is required to submit quarterly report on the overseas investments to the Controller.

(iv) Reporting of Onshore Investment in Foreign Currency Assets

There are no requirements for registration or reporting by a resident investing in approved foreign currency assets offered by approved onshore entities.

5.2.3 Credit Facilities Obtained by Residents

(i) Foreign Currency Credit Facilities

A resident is free to obtain trade financing facilities of any amount in foreign currency from licensed onshore banks.

A resident company may obtain credit facilities in foreign currency up to the equivalent of RM100 million in aggregate on a corporate group basis from licensed onshore banks and non-residents as well as through issuance of onshore foreign currency denominated bonds.

A resident individual may also obtain credit facilities in foreign currency up to an equivalent of RM10 million in aggregate from licensed onshore banks and non-residents.

Any amount exceeding the above permitted limits would require prior permission of the Controller.

There is no restriction for the resident to use the foreign currency credit facilities to finance its own activities in and outside Malaysia.

There is no restriction to repay or prepay permitted credit facilities.

(ii) Ringgit Credit Facilities

A resident is required to seek prior permission of the Controller to obtain any amount of credit facilities in ringgit from non-residents, including from non-resident shareholders or directors.

5.2.4 Forward Foreign Exchange Contracts

(i) Permissible Forward Foreign Exchange Contracts

A resident is free to enter into forward foreign exchange contracts with licensed onshore banks for the following purposes:

(a) Hedging for any payments or receipts for import or export of goods and services as well as income. The contracts may be based on firm commitment or anticipatory basis.

(b) Hedging for any committed capital inflows or outflows, including:

- Drawdown of permitted foreign currency credit facilities.
- Repayment of foreign currency credit facilities up to the full loan amount.
- Payments for permitted investment in foreign currency assets, including extension of credit facilities to non-residents.
- Hedging for existing investments in foreign currency assets.

(ii) Maturity Date of Contracts

The maturity date of the forward foreign exchange contract should be the expected date of receipt or payment of the underlying transaction. When the foreign currency receivables are received earlier, the resident can sell the foreign currency receipts for ringgit on spot basis or temporarily retain the receipts in onshore foreign currency account, pending maturity of the forward foreign exchange contract.

For forward sale of export proceeds, the maturity date of the forward foreign exchange contract should not be later than six months after the intended date of export.

For forward foreign exchange contract involving two foreign currencies, the use or retention of the foreign currency purchased by the resident must be for permitted purposes.

(iii) Interest Rate Swaps

A resident with firm underlying commitment may enter into interest rate swaps with licensed onshore banks and licensed offshore banks in Labuan.

5.2.5 Issuance of Securities

A resident company may issue the following ringgit securities registered in Malaysia to non-residents:

(i) Ordinary shares, including bonus and right issues;

(ii) Irredeemable preference shares; and

(iii) Private debt securities

Proceeds of any amount from the issuance of ordinary shares through an initial public offering on the Main Board of Bursa Malaysia may be used for investment in foreign currency assets, including extension of foreign currency credit facilities to non-residents.

Proceeds from the issuance of ringgit private debt securities may be used for any purpose including the purchase of foreign currency assets of not more than RM50 million in a calendar year.

5.2.6 Foreign Currency Accounts (FCA)

A resident, individual or company, with or without any domestic ringgit credit facilities is free to open FCA to retain any amount of foreign currency receipts, other than receipts from export of goods from Malaysia, with:

(i) Licensed onshore banks

(ii) Licensed offshore banks in Labuan

(iii) Overseas banks.

A resident exporter may open FCA with licensed onshore banks to retain any amount of foreign currency export receipts.

Resident individual may maintain joint FCA with another resident individual for any purpose.

A resident individual or company may convert ringgit into foreign currency and credit into FCA onshore or offshore up to the permitted limit for investments in foreign currency assets.

A resident company maintaining FCA with licensed offshore banks in Labuan or overseas banks is required to submit monthly statement (Statement OA) to the Controller.

5.2.7 Import and Export of Currency by Resident Travellers

A resident traveller may import or export ringgit notes up to RM1,000 and to export foreign currency notes, including traveller's cheques, up to an equivalent of USD10,000.

There is no restriction for a resident traveller to bring into Malaysia any amount of foreign currency notes, including traveller's cheques.

A resident traveller is required to obtain permission from the Controller when the resident:

i. Carry into or out of Malaysia, ringgit notes exceeding RM1,000.

ii. Carry out foreign currency notes, including traveller's cheques, exceeding the equivalent of USD10,000.

Permission is given within one day of application.

5.3 Companies Accorded Special Status

5.3.1 Offshore Entities in the Labuan International Offshore Financial Centre

An offshore entity incorporated or registered under the Offshore Companies Act 1990 is declared as a non-resident for foreign exchange administration purposes.

As a non-resident, the offshore entity is free to undertake the following:

i. Obtain any amount of foreign currency credit facilities.

ii. Invest any amount in foreign currency assets.

iii. Enter into foreign exchange contracts involving foreign currencies with licensed onshore banks approved merchant banks, licensed offshore banks in Labuan and any overseas counterparty.

iv. Buy or sell foreign currency (other than the currency of the State of Israel) against ringgit with licensed onshore banks for permitted purposes.

v. Maintain External Accounts with licensed onshore banks to facilitate the defrayment of statutory and administrative expenses in Malaysia.

vi. Receive payments in ringgit from residents arising from fees, commissions, dividends or interest from deposit of funds with onshore financial institutions.

vii. Transact in ringgit financial product with licensed onshore banks or resident brokers for its own account or on behalf of its non-resident clients.

In addition, an offshore insurance entity in Labuan is allowed to receive reinsurance premiums and pay claims arising from reinsurance of domestic insurance business in ringgit.

5.3.2 Multimedia Super Corridor Companies

A company with Multimedia Super Corridor status is exempted from foreign exchange administration requirements for transactions undertaken on own account.

5.3.3 Approved Operational Headquarters

An Approved Operational Headquarter (OHQ) is subject to policies applicable to a resident. In addition, an OHQ is allowed to:

(i) Invest any amount in foreign currency assets to be funded with foreign currency funds or borrowing.

(ii) Obtain any amount of foreign currency credit facilities from licensed onshore banks in Malaysia and from any non-resident, provided the OHQ does not on-lend to, or raise the funds on behalf of, any resident.

(iii) Utilise proceeds of any amount from the issuance of ordinary shares through initial public offering on the Main Board of Bursa Malaysia for investment in foreign currency assets.

5.3.4 Regional Distribution Centre and International Procurement Centres

A Regional Distribution Centre (RDC) and an International Procurement Centre (IPC) are also subject to policies applicable to residents.

5.4 Statistical Reporting

To assist Bank Negara Malaysia to compile balance of payments statistics, residents transacting with non-residents or have overseas foreign currency assets or liabilities, are required to submit statistical forms/reports/statements to Bank Negara Malaysia, where applicable.

Information on the statistical requirements can also be obtained from Bank Negara Malaysia's website, http://www.bnm.gov.my/fxadmin

F Immigration Procedures

1.0 PASSPORT AND VISA REQUIREMENT

All persons entering Malaysia must possess valid national passports or other internationally recognised travel documents valid for travel to Malaysia. These documents must be valid for at least six months beyond the date of entry into Malaysia.

Those with passports not recognised by Malaysia must apply for a document in lieu of the passport as well as a visa issued by Malaysian missions abroad.

Applications for visas can be made at the nearest Malaysian mission abroad. In countries where Malaysian missions have not been established, applications can be made to the nearest British High Commission or Embassy.

Visa Requirements	Citizens of:
No visa required	Commonwealth Countries (except India, Bangladesh, Cameroon, Ghana, Mozambique, Nigeria, Pakistan and Sri Lanka).
No visa required for business or social visits not exceeding 30 days	ASEAN Countries (except Myanmar) and United States of America (except for employment).
No visa required for social visits not exceeding 30 days	Brunei and Singapore
Visa required*	Angola, Bangladesh, Bhutan, Burkina Faso, Burundi, Cameroon, Central African Republic, China, Colombia, Comoros, Congo Democratic Republic, Congo Republic, Cote D'Ivoire, Equatorial Guinea, Eritrea, Ethiopia, Ghana, Guinea- Bissau, Hong Kong (Certificate of Identity), India, Liberia, Mali, Mozambique, Myanmar (normal passport), Nepal, Nigeria, Pakistan, Rwanda, Sri Lanka, Serbia & Montenegro, Taiwan, United Nations (Laissez Passer), and Western Sahara

Visa Requirements	**Citizens of:**
Visa with reference required **	Afghanistan
Visa required for social visits exceeding 14 days	Iraq, Libya, Macao (Travel Permit/ Portugal Certificate of Identity), Palestine, Sierra Leone, Somalia, South Yemen, and Syria
Visa required for social visits exceeding 15 days	Iran
Visa required for social visits exceeding 30 days	Armenia, Azerbaijan, Barbados, Belarus, Benin, Bolivia, Bulgaria, Cambodia, Cape Verde, Chad, Chile, Costa Rica, Equador, El Savador, Estonia, Gabon, Georgia, Greece, Guatemala, Guinea Republic, Haiti, Honduras, Hong Kong SAR, Kazakhstan, Latvia, Lithuania, Macao SAR, Macedonia, Madagascar, Maldova, Mauritania, Mexico, Monaco, Mongolia, Nicaragua, North Korea, North Yemen, Panama, Paraguay, Portugal, Russia, Sao Tome and Principe, Senegal, Slovenia, Sudan, Surinam, Tajikistan, Togo, Ukraine, Upper Volta, Uzbekistan, Vatican City, Venezuela, Zaire, and Zimbabwe.
Visa required for social visits exceeding 90 days	Albania, Algeria, Argentina, Australia, Austria (Vienna), Bahrain, Belgium, Bosnia-Herzegovina, Brazil, Croatia, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, Jordan, Kyrgyzstan, Kuwait, Kyrgyz Republic, Lebanon, Liechtenstein, Luxembourg, Morocco, Netherlands, Norway, Oman, Peru, Poland, Qatar, Romania, St. Marino, Saudi Arabia, Slovakia, South Korea, Spain, Sweden, Switzerland, Tunisia, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, Uruguay, and Yemen

Note:

* *Visa without reference is issued by the Malaysian mission in the respective country.*

** *Visa with reference is visa approved by the Immigration Department*

For nationals of Israel, visas and prior approval from Malaysia 's Ministry of Internal Security are required.

For nationals of Republic of Serbia and the Republic of Montenegro, visas and prior approval from Malaysia's Ministry of Home Affairs are required.

Nationals from other countries other than those stated above (except Israel), no visa is required for visits not exceeding one month.

2.0 ENTRY INTO MALAYSIA

2.1 Passes Issued at Point of Entry

A visitor can obtain a visit pass for the purpose of a social or business visit at the point of entry provided he can satisfy immigration authorities that he has a valid passport and visa (where necessary) which allows him to stay temporarily in Malaysia.

A Visit Pass is issued to visitors for the purpose of a social or/and business visit such as:

- Owners and company representatives entering Malaysia to attend a company meeting or seminar, inspect the company's accounts or to ensure the smooth running of the company
- Investors or businessmen entering to explore business opportunities and investment potential
- Foreign representatives of companies entering to introduce goods for manufacture in Malaysia, but not to engage in direct selling or distribution
- Property owners entering to negotiate, sell or lease properties
- Foreign reporters from mass media agencies entering to cover any event in Malaysia
- Participants in sporting events

These passes cannot be used for employment or for supervising the installation of new machinery or the construction of a factory.

2.2 Passes Issued upon Arrival in Malaysia

Other than applications for entry for the purpose of social or business visits, all applications for passes mentioned below must be made upon arrival in the country.

All such applications must have sponsorship in Malaysia whereby sponsors agree to be responsible for the maintenance and repatriation of the visitors from Malaysia if necessary.

The types of passes are:

(i) Visit Pass (Temporary Employment)

This is issued to persons who enter the country to take up temporary employment for less than 24 months or earn a monthly income of less than RM3,000.

(ii) Employment Pass

This is issued to foreigners who enters the country to take up employment for a minimum period of two years and earn a monthly income of not less than RM2,500.

(iii) Visit Pass (Professional)

This is issued to foreigners who wish to enter the country for the purpose of engaging in short-term contract with any agency.

The categories of foreigners who are eligible are:

- artistes
- those entering for filming
- researchers recognised by the Government of Malaysia
- members of an International Organisation
- volunteers
- invited lecturers/speakers
- those entering for religious purposes
- experts in the installation or maintenance of machines/ computers
- trainees or technical trainees (eg. management trainees in hotels and resorts).

Applications should be made by agency concerned.

(iv) Dependant's Pass.

This is issued to wives and children of the employment pass holders. This pass may be applied together with the application for an employment pass or after the employment pass is issued.

(v) Employment Pass for Foreign Spouses of Malaysian Nationals (Spouse Programme)

Launched on 13th February 1996, this programme aims to provide the privilege to spouses of Malaysian nationals with the intention to work in Malaysia. The objective of this programme is in line with the Government's intention to support and encourage these foreign spouses to channel their skills and expertise towards the development of this country.

Eligibility:

- Foreign spouse of a Malaysian with a Valid Referred Visa (if applicable), legally married under Malaysian Law
- Applicant must have a valid permanent job offer. However, self-employed applicants are not eligible for this programme

Applicant who wants to practise their educational or health discipline should have a recommendation from related agencies such as the Ministry of Education or the Ministry of Health respectively.

All applications should be made to the:

- Employment Pass Division of Immigration Department Headquarters; or
- State Immigration Offices

(vi) Student's Pass.

This is issued to foreigners who enroll in any approved educational institution.

3.0 EMPLOYMENT OF EXPATRIATE PERSONNEL

The Malaysian government is desirous that Malaysians are eventually trained and employed at all levels of employment. Thus, companies are encouraged to train more Malaysians so that the employment pattern at all levels of the organisation will reflect the multi-racial composition of the country.

Notwithstanding this, where there is a shortage of trained Malaysians, foreign companies are allowed to bring in expatriate personnel. In addition, foreign companies are also allowed "key posts", that is, posts that are permanently filled by foreigners.

To further improve Malaysia's investment environment and promote technology transfer and the inflow of foreign skills into Malaysia, the government has further liberalised the policy on the employment of expatriate personnel. Effective form 17 June 2003, the new guidelines on employment of expatriate personnel are as follows:

(i) Manufacturing companies with foreign paid-up capital of US$2 million and above:

- Automatic approval is given for up to 10 expatriate posts, including five key posts.
- Expatriate can be employed for up to a maximum of 10 years for executive posts, and five years for non-executive posts.

(ii) Manufacturing companies with foreign paid-up capital of more than US$200,000 but less than US$2 million:

- Automatic approval is given for up to five expatriate posts, including at least one key post.
- Expatriates can be employed for up to a maximum 10 years for executive posts, and five years for non-executive posts.

(iii) Manufacturing companies with foreign paid-up capital of less than US$200,000 will be considered for both key posts and time posts based on current guidelines. They are:

- Key posts can be considered where the foreign paid-up capital is at least RM500,000. This amount, however, is only a guideline and the number of key posts allowed depends on the merits of each case.
- Time posts can be considered for up to 10 years for executive posts that require professional qualifications and practical experience, and five years for non-executive posts that require technical skills and experience. For these posts, Malaysians must be trained to eventually take over the posts.
- The number of key posts and time posts allowed depends on the merits of each case.

(iv) For Malaysian-owned manufacturing companies, automatic approval for the employment of expatriates for technical posts, including R&D posts, will be given as requested.

An expatriate personnel employed in the manufacturing sector, excluding ICT related activities, should be at least 27 years old. For ICT related activities, an expatriate personnel employed should be at least 21 years old.

An expatriate personnel who is transferred from one post to another within the same company will be required to obtain a new employment pass. His original employment pass will be amended to reflect the change in post. A new expatriate personnel replacing another must also obtain a fresh employment pass.

All employment passes are valid for the period approved for the post. However, for key post holders, employment passes will be issued on a 5-year renewable basis except in circumstances where:

- the validity of the expatriate's passport is less than five years;
- the expatriate's employment contract is less than five years; or
- the employer requires the services of the expatriate for less than five years.

Holders of employment passes will be issued with multiple entry visas valid for the duration of the employment pass.

4.0 APPLYING FOR EXPATRIATE POSTS

All applications for expatriate posts from new and existing companies (including those not involving expansion or diversification) in the manufacturing and related service sectors should be submitted to MIDA. This includes companies required to obtain manufacturing licence as well as companies exempted from the manufacturing licence.

5.0 EMPLOYMENT OF FOREIGN WORKERS

In Malaysia, foreign workers can be employed in the manufacturing, construction, services (domestic servants, restaurant workers, cleaners, workers in cargo handling, workers in welfare homes, launderettes, island resorts and caddies in golf clubs) and agricultural sectors.

All applications from companies located in Peninsular Malaysia should be submitted to the Ministry of Home Affairs.

Only nationals from the specified countries below are allowed to work in the selected sectors:

Nationals of:	**Approved Sectors**
Indonesia Cambodia Laos Myanmar Nepal Pakistan Philippines Sri Lanka Thailand Vietnam	Manufacturing, services, agricultural and construction
Turkmenistan Uzbekistan Kazakhstan	Manufacturing, services and construction
India	Agricultural, services (cooks) and construction (fixing of high voltage cable)

Approval is based on the merits of each case and subject to conditions that will be determined from time to time. Applications to employ foreign workers will only be considered when efforts to find qualified local citizens and permanent residents have failed.

An annual levy on foreign workers is imposed as follows:

Approved Sectors	**Annual Levy**
Manufacturing	RM1,200
Services	RM1,200 -RM1,800
Construction	RM1,200
Agricultural	RM360 - RM540
Domestic Help	RM360

G List of Promoted Activities and Products

I GENERAL

List of Promoted Activities and Products which are Eligible for Consideration of Pioneer Status or Investment Tax Allowance under the Promotion of Investments Act 1986

1.0. AGRICULTURAL PRODUCTION

(1) Cultivation of tea
(2) Cultivation of fruits
(3) Cultivation of vegetables, tubers or roots
(4) Cultivation of rice or maize
(5) Cultivation of herbs or spices
(6) Cultivation of essential oil crops
(7) Production of planting materials
(8) Cultivation of crops for animal feed
(9) Floriculture
(10) Apiculture
(11) Livestock farming (excluding rearing of chickens, ducks or pigs)
(12) Production of breeder stock
(13) Spawning, breeding and culturing of aquatic products
(14) Off-shore fishing
(15) Cultivation of medicinal plants
*(16) Sericulture
*(17) Cultivation of cocoa
*(18) Cultivation of coconut
*(19) Cultivation of sago palm
*(20) Rearing of chicken and ducks

2.0 PROCESSING OF AGRICULTURAL PRODUCE

(1) Chocolate and chocolate confectionery
(2) Fruits
(3) Vegetables, tubers or roots
(4) Essential oils
(5) Livestock products
(6) Aquatic products
(7) Agricultural waste or agricultural by-products
(8) Aquaculture feed

(9) Plant extracts for pharmaceutical, perfumery, cosmetic or food industries
(10) High fructose syrup
(11) Cocoa and cocoa products
*(12) Illipe products
*(13) Coconut products except copra or crude coconut oil
*(14) Starch products

3.0 FORESTRY AND FORESTRY PRODUCTS

(1) Cultivation of timber, bamboo or cane
(2) Cane products
(3) Bamboo products

4.0 MANUFACTURE OF RUBBER PRODUCTS

(1) Earthmover tyres, agricultural tyres, industrial tyres, commercial vehicle tyres, motorcycle tyres, aircraft tyres or solid tyres
(2) Precured tread liners
(3) Retreading of aircraft tyres
(4) Latex products:
- (a) Surgical gloves
  (b) Safety/special function gloves
  (c) Condoms
  (d) Catheters
  (e) Rubber (elastomeric) specialty coatings
  (f) Rubberised fabrics

(5) Dry rubber products:
- (a) Beltings
  (b) Hoses, pipes and tubings
  (c) Rubber profiles
  (d) Inflatable rubber products
  (e) Industrial and office equipment rollers
  (f) Seals, gaskets, washers, packings and rings
  (g) Anti-vibration, damping and sound insulation products
  (h) Rubber linings
  (i) Rubber floorings
  (j) Rubber moulds
  (k) Modified natural rubber

(6) Reclaimed rubber
(7) Rubber support
(8) Latex products:
- (a) Carpet underlay
  (b) Swimming caps

(c) Balloons
(d) Finger cots
(e) Toys
(f) Latex thread

5.0 MANUFACTURE OF OIL PALM PRODUCTS AND THEIR DERIVATIVES

(1) Oleochemicals or oleochemical derivatives or preparations
(2) Margarine, vanaspati, shortening or other manufactured fat products
(3) Fatty acid distillate derivatives
(4) Cocoa butter replacers, cocoa butter substitutes, cocoa butter equivalent, palm mid-fraction or special olein
(5) Crude palm kernel oil and palm kernel cake/expeller
(6) Palm-based nutraceuticals, constituents of palm oil/palm kernel oil
(7) Palm-based food products:
- (a) Specialty animal fat replacer
  (b) Palm-based mayonnaise and salad dressing
  (c) Substituted coconut milk/powder
  (d) Red palm oil and its products
  (e) Palm-based food ingredient
  (f) Modified (interesterified) palm oil and palm kernel oil products
  (g) Microencapsulated palm-based products

(8) Processed products from:
- (a) Palm fatty acid distillate/palm kernel fatty acid distillate
  (b) Palm kernel cake/expeller
  (c) Palm oil mill effluent

(9) Products from palm biomass
*(10) Refining of palm oil or palm kernel oil

6.0 MANUFACTURE OF CHEMICALS AND PETROCHEMICALS

(1) Chemical derivatives from organic or inorganic sources
(2) Fine chemicals
(3) Basic manufacture of pesticides
(4) Petrochemical products
(5) Epoxy encapsulation moulding compounds
(6) Cable compounds (excluding PVC cable compound)
(7) Titanium dioxide pigment
(8) Barium sulphate pigment
(9) Iron dioxide pigment

(10) Metallic pigment
(11) Recycling of chemicals
(12) Anti-tack solutions
(13) Injet inks
*(14) Cleaning preparations, cosmetics or toilet preparations
*(15) Wax products
*(16) Specialised paints or coatings

7.0 MANUFACTURE OF PHARMACEUTICAL AND RELATED PRODUCTS

(1) Pharmaceuticals goods
(2) Clinical diagnostic reagents
(3) Gelatine or gelatine products
(4) Intravenous, dialysis or irrigating solutions
(5) Vaccines
(6) Medicaments

8.0 MANUFACTURE OF WOOD AND WOOD PRODUCTS

(1) Reconstituted wood-based panel boards or products
(2) Wooden solid or other specialised function doors or wooden solid windows
(3) Multi-ply parquet
(4) Wooden furniture or parts
(5) Insulation for cryogenic vessels
*(6) All wooden products except sawn timber, veneer and plain plywood

9.0 MANUFACTURE OF PULP, PAPER AND PAPERBOARD

(1) Pulp
(2) Newsprint
(3) Security paper
(4) Resin impregnated paper and products thereof
(5) Printing and writing paper
(6) Corrugated medium paper, testliner or kraftliner
(7) Kraft paper
(8) Paperboard
(9) Moulded paper
(10) Specialty paper
*(11) All types of paper and paper products from pulp

10.0 MANUFACTURE OF TEXTILES AND TEXTILE PRODUCTS

(1) Natural or man-made fibres
(2) Yarn of natural or man-made fibres

(3) Woven fabrics
(4) Finished knitted fabrics
(5) Finishing of fabrics such as bleaching, dyeing and printing
(6) Knitwear
(7) Skiwear or winter outerwear
(8) Non-woven products
(9) Elastic webbings
(10) Textile hose piping

11.0 MANUFACTURE OF CLAY-BASED, SAND-BASED AND OTHER NON-METALLIC MINERAL PRODUCTS

(1) High alumina or basic refractories
(2) Kiln furniture
(3) Laboratory, chemical or industrial wares
(4) Artware, ornaments or articles for adornment of ceramic or glass
(5) Glassware
(6) High tension electrical glass insulators
(7) Glass components or parts for electrical, electronic or industrial use
(8) Glass fibre in all forms produced from basic raw materials
(9) Finished woven fabrics of glass fibre
(10) Optical glass blanks
(11) Alumino-silicate ceramic fibres
(12) Ceramic components or parts for electrical, electronic or industrial uses
(13) Fritz, zirconium silicate powder, glaze or glaze stains
(14) Silicon dioxide fillers
(15) Rockwool
(16) Synthetic industrial diamonds
(17) Processed ball clay
(18) Articles of pressed or moulded glass as bricks, tiles, slabs, paving blocks, pellets and squares
(19) Tableware
(20) Coated glass
(21) Integrated cement projects
(22) Absorbent mineral clay
(23) Marble and granite products
(24) Gypsum plaster board
(25) Panels, boards, tiles, blocks or similar articles of vegetable fibre, wood fibre, wood shavings or wood wastes, agglomerated with cement, plaster or other mineral binding substance
(26) Crystalised glass panel

*(27) Processed kaolin
*(28) Ceramic wall or floor tiles
*(29) Vitrified clay pipes
*(30) Calcium carbonate powder
*(31) Coated or uncoated talc or barium sulphate powders (average particle size less than 5 microns)
*(32) High grade silica sand or powder
*(33) Clay roofing tiles
*(34) Quicklime and hydrated lime

12.0 MANUFACTURE OF IRON AND STEEL

(1) Blooms or slabs of steel
(2) Shapes or sections of steel of height more than 200 mm
(3) Plates, sheets, coils, hoops or strips of steel
- (a) Hot rolled plates, sheets, coils, hoops or strips
- (b) Cold rolled/cold reduced plates, sheets, coils, hoops or strips

(4) Seamless steel pipes
(5) Seamless high pressure gas cylinders
(6) Steel tyre cord and high pressure reinforced hose wire
(7) Ferromanganese, silicon manganese or ferrosilicon
(8) Electrolytic galvanised steel sheet in coil
*(9) Welded steel pipes or pipe fittings
*(10) Bars or wire rods (except those of mild steel), angles, shapes or sections of all grades of steel either hot-rolled, cold-rolled or cold-finished
*(11) Wires or wire products of iron or steel
*(12) Steel fabricated products

13.0 MANUFACTURE OF NON-FERROUS METALS AND THEIR PRODUCTS

(1) Dressing and smelting of non-ferrous metals other than tin metals
(2) Primary ingots, billets or slabs of non-ferrous metals
(3) Bars, rods, shapes or sections of non-ferrous metals except EC copper rods
(4) Plates, sheets, coils, hoops or strips of non-ferrous metals
(5) Pipes or tubes of non-ferrous metals
(6) Copper clad laminates and products from in-house copper clad laminates
(7) Powder, cream or paste of non-ferrous metals
*(8) Wire or wire products of non-ferrous metals
*(9) Fabricated products of non-ferrous metals

14.0 MANUFACTURE OF MACHINERY AND MACHINERY COMPONENTS

(1) Specialised/process machinery or equipment associated with specific industry including:
- (a) Agricultural machinery or equipment
- (b) Mining or mineral extraction/processing machinery or equipment
- (c) Construction machinery or equipment
- (d) Waste water/sewage treatment equipment
- (e) Industrial sewing machines

(2) Supporting services machinery or equipment including power generating machinery or equipment

(3) Material handling machinery or equipment including elevators or escalators

(4) Hand tools or power tools

(5) Machinery and industrial parts/components including:
- (a) Printing rolls or embossing rolls
- (b) Dicing blades, accessories for silicon wafers or ceramic substrates
- (c) Offset printing plates
- (d) Industrial seals or seal materials

(6) Machine tools (metalworking, woodworking and others) including welding/soldering equipment

(7) Packaging machinery

(8) Machinery or equipment for the services sector including:
- (a) Fire fighting equipment
- (b) Hand labellers

(9) Reconditioning of heavy machinery and equipment
- (a) Automobile air conditioning compressors

(10) Servicing and upgrading of machinery and equipment

15.0 MANUFACTURE OF TRANSPORT EQUIPMENT, COMPONENTS AND ACCESSORIES

(1) Bicycles

(2) Bicycles parts:
- (a) Drive set (chain wheel and crank)
- (b) Brake set
- (c) Speed change set
- (d) Hub

(3) Speciality cars

(4) Engines

(5) Engine parts:
- (a) Cylinder block, cylinder head, rocker cover, flywheel or pulley

(b) Crank shaft, connecting rod, cam shaft, rocker, rocker shaft, engine valve, sprocket, piston pin or piston ring
(c) Intake manifold or exhaust manifold
(d) Oil pan, oil pump, oil pump gear shaft, fuel pump, water pump or oil seal
(e) Timing belt, timing chain, carburettor, ignition coil or distributor
(f) Fuel injection mechanism (injector, pump, tubing, valves, regulator, sensors, electronic control modules)
(g) High tension cables
(h) Engine bracket
(i) Magneto
(j) Capacitor discharge unit

(6) Transmissions
(7) Transmission parts:
- (a) Transmission shift lever and fork
(b) Transmission control linkages
(c) Speedometer pinion
(d) Clutch
(e) Torque converter
(f) Drive shaft

(8) Axle, wheel, wheel hub or knuckle
(9) Disc brake, drum brake, brake cylinder, brake master cylinder, brake booster, anti-lock braking mechanism, clutch master cylinder or clutch operating cylinder
(10) Steering wheel, steering column, steering gear box, power steering pump, rack tubes for hydraulic/electric power steering and feed pipes for hydraulic power steering, steering linkages, tie rod or constant velocity joints
(11) Stabilizer bar, suspension arm or suspension arm shaft and member
(12) Body panels, chassis frame, fuel tank, window regulator, locks and keys or hinges
(13) Head lights, indicating/signalling lights, meters, gauges, electronic control modules, switches or horns
(14) Weather strips, control cables, speedometer cables, metallic tubings or hoses
(15) Catalytic converter
(16) Vehicle safety air bag
(17) Navigational system
(18) Automotive electronic module/component or sensor
(19) Seat mechanism including seat adjuster or locking mechanism or seat recliner
(20) System integrator:
- (a) Front corner module

(b) Rear corner module
(c) Instrument panel module
(d) Strut and absorbers and spring assembly module
(e) Bumper assembly
(f) Front cross member module
(g) Function integrated door module
(h) Fuel tank module
(i) Seat assembly
(j) Pedal assembly
(k) Door trim assembly
(l) Floor console assembly
(m) Tyre and wheel assembly
(n) Brake system
(o) Wiper system
(p) Exhaust system
(q) Audio system
(r) HVAC (Heater Ventilation Air-conditioning system)
(s) Airbag system
(t) Power and signal distribution system
(u) Alarm system
(v) Seat belt system
(w) Exterior lighting system
(x) Body in white assembly

(21) Gear
(22) Cooling equipment, air-inlet equipment or exhaust equipment, compressor and expansion valve for automotive air-conditioning
(23) Aerospace industry:
- (a) Manufacture and assembly or aircraft
(b) Manufacture of aircraft equipment, components, accessories or parts thereof
(c) Ground support equipment for aerospace industry

(24) Pleasure crafts, hydrofoils or hovercrafts
(25) Maintenance, repair, overhaul or service of aircraft, aircraft components or accessories or testing and repairing of avionics
(26) Manufacture of train and related equipment:
- (a) Construction or locomotive, rail car
(b) Coach, wagon, bogie
(c) Electric multiple unit and power generating car
(d) Railway signalling and communication system

(27) Motor vehicles
(28) Two wheeler motorised vehicles
*(29) Electrical or electronics systems instrumentation
*(30) Shipbuilding
*(31) Shiprepair

16.0 SUPPORTING PRODUCTS/ACTIVITIES

(1) Metal castings
(2) Metal forgings
(3) Metal surface treatment/finishing
(4) Machining
(5) Moulds, tools or dies
(6) Powder metallurgical parts (sintering of metal parts)
(7) Heat treatment
(8) Mould texturing
(9) Irradiation service
(10) Gas sterilisation service
(11) Overhaul, repair, reconditioning, modification or servicing and testing of turbine engines, components or sub-assemblies
(12) Advanced composite materials
(13) Mould designing
*(14) Metal stamping
*(15) Galvanising, shearing or slitting of metal sheets or other related engineering services

17.0 MANUFACTURE OF ELECTRICAL AND ELECTRONIC PRODUCTS AND COMPONENTS AND PARTS THEREOF

(1) Digital television receivers
(2) Digital television receiver parts:
- (a) Cathode ray tubes
  (b) Electron guns
  (c) Polished glass panels or glass funnels for colour picture tubes

(3) Digital audio video recorders/players and parts:
- (a) Digital audio recorders/players
  (b) Digital tape mechanisms
  (c) Digital disk mechanisms
  (d) Optical pick-up units
  (e) Magnetic heads

(4) Computer, parts or computer peripherals:
- (a) Computers (excluding detached peripherals not manufactured in-house)
  (b) Monitors
  (c) Computer printers (including printer mechanism)
  (d) Printer heads
  (e) Computer scanners
  (f) Drive units
  (g) Head gimbal assemblies/head carriage assemblies
  (h) Headstack assemblies
  (i) Computer magnetic heads

(j) Data storage media
(k) Voice coil motors
(l) Actuators
(m) Electronic games equipment including photo-detector joysticks
(n) Disk substrates or disk blanks
(o) Re-manufacturing of computer drives

(5) Electronic components:
- (a) Quartz crystals
(b) Motors
(c) Printed circuit boards (excluding rigid single sided circuit boards)
(d) Cables or wires for electronic devices including flat cables
(e) Hermetic seals
(f) Electrical/electronic components moulded with magnets
(g) Heat shrinkable cable joints and terminations
(h) Thermistors
(i) Connectors with or without wires or cables
(j) Bonding wires
(k) Lead-frames
(l) Magnets or ferrite cores
(m) Displays-electroluminescent, plasma or liquid crystal
(n) Membrane switches
(o) Surface mount components
(p) Optical fibres or optical fibre products
(q) SMT chipholders on lead-frames
(r) Solar cells
(s) Magnetron
(t) Fabrication of light emitting diodes (LED)

(6) Recorded and unrecorded media:
- (a) Compact discs
(b) Magnetic webs or pancakes

(7) Electronic machines and equipment/devices:
- (a) Teller machine
(b) Office equipment
(c) Alarm equipment/systems or devices
(d) Ultrasonic cleaners
(e) Computing scales
(f) Cash registers
(g) Demagnetisers
(h) Industrial controllers
(i) Computer Aided Design (CAD), Computer Aided Manufacturing (CAM) or Computer Aided Engineering (CAE) equipment

(j) Robots or robotics
(k) Multimedia integrated controller

(8) Wafer fabrication:
- (a) Semiconductor wafer fabrication
(b) Reclaimed silicon wafers

(9) Electrical products:
- (a) Uninterruptible power supplies
(b) Batteries excluding manganese dioxide, dry cells and lead acid batteries
(c) Solar panels
(d) Discharge tubes

(10) Telecommunication:
- (a) Telecommunication equipment including multi feature mobile phones but excluding fixed line telephone sets
(b) Antennae for communication equipment
(c) Voice/pattern/vision recognition or synthesis equipment
(d) Data terminal displays
(e) Global positioning system
(f) Electronic navigational aid
(g) Electronic tracking aid

(11) Software development and production
(12) Discharge tubes and products thereof
(13) Air sterilizer
*(14) Transformers or coils
*(15) Automatic gate mechanisms
*(16) Consumer electronic products; parts, sub-assemblies or accessories thereof
*(17) Industrial electronic products; parts, sub-assemblies and accessories thereof
*(18) Electrical household appliances and parts thereof
*(19) Electrical industrial equipment or parts thereof

18.0 MANUFACTURE OF PROFESSIONAL, MEDICAL, SCIENTIFIC AND MEASURING DEVICES/PARTS

(1) Medical, surgical, dental or veterinary devices/equipment
(2) Gauges or measuring apparatus
(3) Surveying, hydrographic, navigational, meteorological, hydrological or geophysical instruments
(4) Testing equipment
(5) Clocks or watches
(6) Stainless steel cannulae or tubes for needles

19.0 MANUFACTURE OF PHOTOGRAPHIC, CINEMATOGRAPHIC, VIDEO AND OPTICAL GOODS

(1) Cameras
(2) Lenses
(3) Binoculars, telescopes, magnifying glasses or microscopes
(4) Cinematographic or video equipment

20.0 MANUFACTURE OF PLASTIC PRODUCTS

(1) Inflatable plastic products
(2) Specialised plastic films/sheets
(3) Geosystems products [Cellular Confinement System (CCS) and Porous Pavement System (PPS)]
(4) Plastic products for engineering use
(5) Precision engineering plastic products
(6) Multiwall pipes
*(7) Expanded polystyrene foam

21.0 MISCELLANEOUS

(1) Musical instruments
(2) Furniture hardware
(3) Souvenirs, handicrafts or giftware
(4) Electronic Toys
(5) Sports goods or equipment
(6) Spectacles or spectacle frames
(7) Accessories for the textile industry
(8) Cutlery
(9) Lock sets or lock cylinder mechanisms
(10) Jewellery of precious metal
(11) Costume jewellery
(12) Designing and printing of decorative surfaces for commercial applications
(13) Integrated exhibits
(14) Microbials and probiotics
(15) Bank notes
(16) Thermic containers and parts thereof
(17) Biodegradable disposable packaging and household wares
(18) Bio-ceramic embedded textile products
(19) Personal ballistic armour
(20) Fall protection equipment
(21) Ball pen tips
*(22) Toys (excluding electronic toys)
*(23) Art and design apparatus - all types
*(24) Enamelled household ware
*(25) Cooker or barbeque sets

22.0 HOTEL BUSINESS AND TOURIST INDUSTRY

(1) Establishment of medium and low-cost hotels (up to a three-star hotel)
(2) Expansion/modernisation of existing hotels
(3) Establishment of tourist projects
(4) Expansion /modernisation of tourist projects
(5) Establishment of recreational camps
(6) Establishment of convention centres

23.0 FILM INDUSTRY

(1) Film or video production
(2) Post production for film or video

24.0 MANUFACTURING RELATED SERVICES

(1) Research and development (R&D)
(2) Design and prototyping
(3) Technical or vocational training
(4) Integrated logistic services
(5) Integrated market support services
(6) Integrated centralised utility facilities
(7) Total chemical management system
(8) Cold chain facilities and services for food products
(9) Environmental management
- (a) Energy conservation/efficiency services #
  (b) Energy generation activities, using renewable energy sources (biomass, hydro power, solar power) #
  (c) Storage, treatment and disposal of toxic and hazardous waste
  (d) Waste recycling activities
    (i) agricultural waste or agricultural by-products
    (ii) recycling of toxic and non-toxic wastes

25.0 MANUFACTURE OF KENAF BASED PRODUCT

(1) Animal feed, kenaf particle or fibre, reconstituted panel, board or products and moulded products.

II MANUFACTURING RELATED SERVICES

(1) Operational Headquarters
(2) Regional Distribution Centres
(3) International Procurement Centres
(4) Regional Offices
(5) Representative Offices

(6) Research and development (R&D)
(7) Design and phototyping
(8) Technical or vocational training
(9) Integrated logistis services
(10) Integrated market support services
(11) Integrated centralised utility facilities
(12) Total chemical management system
(13) Cold chain facilities and services for food products
(14) Environmental management
  (a) Energy conservation/efficiency services #
  (b) Energy generation activities, using renewable energy sources (biomass, hydro power, solar power) #
  (c) Storage, treatment and disposal of toxic and hazardous waste
  (d) Waste recycling activities
    - agricultural waste or agricultural by-products
    - non-toxic wastes

III HIGH TECHNOLOGY COMPANIES

List of Promoted Activities and Products for High Technology Companies which are Eligible for Pioneer Status or Investment Tax Allowance under the Promotion of Investments Act 1986

1.0 ADVANCED ELECTRONICS

(1) Design, development and manufacture of:
  • (a) Computer or peripherals
    (b) Microprocessor application
(2) Development and production of communication equipment
(3) Design and production of integrated circuits (IC)
(4) Development and production of catchode ray tubes and advance displays
(5) Design, development and manufacturer of printer heads, head gimbals/head carriages, headstacks, magnetic heads, voice coil motors and actuators
(6) Development and production of advanced connectors
(7) Development and manufacturing of high density interconnect printed circuit boards (PCB) excluding rigid single-sided PCB
(8) Design, development and manufacture of printer mechanism
(9) Development and production of surface mount components

(10) Design, development and manufacture of Electro-Magnetic Interference (EMI) shielding products
(11) Design, development and manufacture of contra rotator washing machines

2.0 EQUIPMENT/ INSTRUMENTATION

(1) Design, development and manufacture of:
  (a) Medical equipment
  (b) Medical implant or devices
  (c) Scientific equipment
  (d) Cyclonic separation equipment
(2) Development and production of high pressure water cutting equipment
(3) Design, development and manufacture of air flow equipment and related products

3.0 BIOTECHNOLOGY

(1) Development, testing and production of:
  • (a) Pharmaceuticals
  (b) Fine chemicals
  (c) Food or food ingredients
  (d) Feed or feed supplements
  (e) Biodiagnostics
(2) Development and production of:
  • (a) Cell cultures
  (b) Biopolymers
  (c) Biomaterials
(3) Development and production of biotechnology processes for waste treatment

4.0 AUTOMATION AND FLEXIBLE MANUFACTURING SYSTEMS

(1) Development and production of:
  • (a) Computer process control systems/equipment
  (b) Process instrumentation
  (c) Robotic equipment
  (d) Computer numerical control (CNC) machine tools

5.0 ELECTRO-OPTICS AND NON-LINEAR OPTICS

(1) Development and production of:
  • (a) Optical lenses
  (b) Laser application equipment
  (c) Fibre-optic communication equipment

(2) Design, development and production of cameras including lens units, lens barrel units and view finder units

6.0 ADVANCED MATERIALS

(1) Application or production of:
- (a) Polymers or biopolymers
  (b) Superconductors
  (c) Fine ceramics or advanced ceramics
  (d) High strength composites

(2) Nano particles and their formulations thereof

7.0 OPTOELECTRONICS

(1) Development and production of:
- (a) Optoelectronics systems components
  (b) Optical systems components
  (c) Photo-couplers
  (d) Semiconductors lasers

8.0 SOFTWARE ENGINEERING

(1) Development and production of:
- (a) Neural networks
  (b) Pattern recognition systems
  (c) Machine vision
  (d) Fuzzy logic systems

9.0 ALTERNATIVE ENERGY SOURCES

(1) Development and production of:
- (a) Fuel cells
  (b) Polymer batteries
  (c) Solar cells
  (d) Renewable energy

10.0 AEROSPACE

(1) Design or development and production or assembly of:
- (a) Aircraft
  (b) Aircraft equipment, components, accessories or parts thereof

(2) Modification and conversion of aircraft

(3) Refurbishment or re-manufacture of aircraft equipment, components, accessories or parts of aircraft

11.0 FOOD PRODUCTION AND FOOD PROCESSING

(1) Food production using emerging technologies and advanced farming systems

(2) Development, testing and manufacturing of food products using emerging technologies and advanced manufacturing systems

12.0 ENGINEERING SUPPORT INDUSTRIES/SERVICES

(1) Design or development and manufacture of:
   a. trim and form dies
   b. semiconductor cavity/encapsulation moulds
   c. suspension tooling for hard disk drive parts
   d. progressive tooling for lead frames
   e. fibre optic connection tooling
   f. moulds, tools and dies for automotive industry

(2) Design, development and manufacture of advanced tooling and equipment for the production of precision components/parts for industrial applications

(3) Development and production of precision machined and die cast parts using advanced manufacturing systems

13.0 WOOD PROCESSING

(1) Development, testing and processing of engineered wood products

IV INDUSTRIAL LINKAGE PROGRAMME (ILP)

List of Promoted Products and Activities in an Industrial Linkage Programme (ILP) which are Eligible for Consideration of Pioneer Status or Investment Tax Allowance under the Promotion of Investments Act 1986

1.0 MANUFACTURE OF RUBBER PRODUCTS

(1) Moulded rubber products

(2) Conveyor belts, transmission belts, V-type belts or rubber beltings

2.0 MANUFACTURE OF PLASTIC PRODUCTS

(1) Plastic products for engineering use

3.0 MANUFACTURE OF CLAY-BASED, SAND-BASED AND OTHER NON-METALLIC MINERAL PRODUCTS

(1) Ceramic components or parts for electrical, electronic or industrial uses
(2) Glass envelopes
(3) Glass fittings
(4) Advanced composite materials or products

4.0 MANUFACTURE OF TEXTILES AND TEXTILE PRODUCTS

(1) Elastic webbings

5.0 MANUFACTURE OF IRON AND STEEL

(1) Wire or wire products of irons and steel
(2) Steel fabricated products

6.0 MANUFACTURE OF NON-FERROUS METALS AND THEIR PRODUCTS

(1) Copper clad laminates and products thereof
(2) Wire or wire products of non-ferrous metals
(3) Fabricated products of non-ferrous metals

7.0 SUPPORTING PRODUCTS/SERVICES

(1) Metal castings
(2) Metal forgings
(3) Plating
(4) Machining
(5) Moulds, tool or dies
(6) Heat treatment
(7) Mould texturing
(8) Metal stamping
(9) Industrial seals or seal materials
(10) Powder metallurgical parts (sintering of metal parts)
(11) Maintenance, repair, overhaul, modification, servicing or testing of turbine engines, components or sub-assemblies
(12) Maintenance, repair, overhaul, modification, servicing or testing of aircraft, aircraft components or accessories
(13) Maintenance, repair, overhaul, modification, servicing or testing of ship components or accessories

8.0 MANUFACTURE OF TRANSPORT EQUIPMENT, COMPONENTS AND ACCESSORIES

(1) Parts and components for bicycles or tricycles
(2) Parts and components for pleasure crafts, hydrofoils or hovercrafts
(3) Parts, components or accessories for motor vehicles
(4) Aircraft equipment, components, accessories or parts thereof

9.0 MANUFACTURE OF MACHINERY AND MACHINERY COMPONENTS

(1) Machinery components

10.0 MANUFACTURE OF ELECTRICAL AND ELECTRONIC PRODUCTS AND COMPONENTS AND PARTS THEREOF

(1) Computer peripherals:
   a. Drive units
   b. Keyboards
(2) Alarm equipment/system or devices
(3) Parts, sub-assemblies or accessories of consumer or industrial electronic products

V SMALL-SCALE COMPANIES

List of Promoted Activities and Products for Small-Scale Companies which are Eligible for Consideration of Pioneer Status or Investment Tax Allowance under the Promotion of Investments Act 1986

1.0 AGRICULTURAL ACTIVITIES

(1) Aquaculture
(2) Apiculture
(3) Flowers and ornamental foliages
(4) Sericulture

2.0 PROCESSING OF AGRICULTURAL PRODUCE

(1) Coffee
(2) Tea
(3) Fruits
(4) Vegetables

(5) Herbs or spices
(6) Cocoa and cocoa products
(7) Coconut products except copra and crude coconut oil
(8) Starch and starch products
(9) Cereal products
(10) Sugar and confectionary products
(11) Plant extracts
(12) Aquatic products
(13) Livestock products
(14) Apiculture products
(15) Aquaculture feed
(16) Animal feed ingredients
(17) Agricultural wastes and by-products

3.0 FORESTRY PRODUCTS

(1) Rattan products (excluding rattan poles, peel and splits)
(2) Bamboo products
(3) Other forestry products

4.0 MANUFACTURING OF RUBBER PRODUCTS

(1) Moulded rubber products
(2) Extruded rubber products
(3) General rubber goods
(4) Foam rubber products
(5) Inflatable rubber products

5.0 PROCESSING OF OIL PALM PRODUCTS AND THEIR DERIVATIVES

(1) Margarine, vanaspati, shortening and other manufactured fat products
(2) Oleochemical or oleochemical derivatives or preparations
(3) Biomass products
(4) Palm heart products
(5) Palm oil/palm kernel oil wastes or by-products

6.0 MANUFACTURE OF CHEMICALS AND PHARMACEUTICALS

(1) Pigment preparations and dispersion
(2) Desiccant
(3) Bio-resin (biopolymer)
(4) Herbal medicament and preparations
(5) Inkjet inks

7.0 MANUFACTURE OF WOOD AND WOOD PRODUCTS

(1) Decorative panel boards (excluding plain plywood)
(2) Timber mouldings
(3) Builders carpentry and joinery
(4) Products derived from utilisation of wood waste (e.g. activated charcoal, wooden briquettes, wood wool)
(5) Wooden household and office articles

8.0 MANUFACTURE OF PAPER AND PAPERBOARD PRODUCTS

(1) Moulded paper products

9.0 MANUFACTURE OF TEXTILES AND TEXTILE PRODUCTS

(1) Batik
(2) Accessories for the textile industry
(3) Knitted fabrics
(4) Hand woven fabrics

10.0 MANUFACTURE OF CLAY-BASED AND SAND-BASED PRODUCTS AND OTHER NON-METALLIC MINERAL PRODUCTS

(1) Artware, ornaments and articles of ceramic or glass
(2) Glass fittings for lighting purposes
(3) Panels, boards, tile blocks and similar articles of vegetable fibre, straw, wood shavings or wood wastes, agglomerated with cement plaster or with other mineral binding substances
(4) Abrasive products for grinding, polishing and sharpening

11.0 MANUFACTURE OF IRON AND STEEL PRODUCTS

(1) Wire and wire products
(2) Fabricated products

12.0 MANUFACTURE OF NON-FERROUS METALS AND THEIR PRODUCTS

(1) Wire and wire products
(2) Powder, cream or paste
(3) Fabricated products

13.0 SUPPORTING PRODUCTS/SERVICES

(1) Metal forgings
(2) Machining
(3) Metal stamping
(4) Surface treatment/ finishing
(5) Moulds, tools and dies
(6) Industrial seals or seals materials
(7) Cutting tools
(8) Metal casting
(9) Powder metallurgical parts (sintering of metal parts)
(10) Mould texturing

14.0 MANUFACTURE OF HANDTOOLS

(1) Handtools

15.0 MANUFACTURE OF TRANSPORT, COMPONENTS, PARTS AND ACCESSORIES

(1) Transport components, parts and accessories

16.0 MANUFACTURE OF PARTS AND COMPONENTS FOR MACHINERY AND EQUIPMENT

(1) Parts and components for machinery and equipment.

17.0 ASSEMBLY AND MANUFACTURE OF ELECTRICAL AND ELECTRONIC PRODUCTS, COMPONENTS AND PARTS THEREOF

(1) Decorative lights
(2) Antennae
(3) Capacitors
(4) Disc card players
(5) Energy-saving lamps
(6) Resistors
(7) Power supplies
(8) Invertors
(9) Key pads and key switches
(10) Printed circuit board assemblies using surface mount technology

(11) Electronic ballast
(12) Three-phase electrical accessories or devices
(13) Telecommunication equipment, computer / computer peripherals and industrial electronic equipment
(14) Electrical security equipment/devices, components and parts thereof
(15) Measurement or scale instruments
(16) Security equipment/devices, components and parts thereof
(17) Testing equipment
(18) Consumer electrical parts and components
(19) Consumer electronics parts and components
(20) Industrial electrical parts and components thereof
(21) Industrial electronics parts and components thereof

18.0 MANUFACTURE OF KITCHENWARE AND TABLEWARE

(1) Kitchenware
(2) Tableware

19.0 MANUFACTURE OF FURNITURE, PARTS AND COMPONENTS

(1) Furniture, parts and components

20.0 MANUFACTURE OF GAMES AND ACCESSORIES

(1) Games and accessories

21.0 MANUFACTURE OF HANDICRAFTS AND SOUVENIRS

(1) Handicrafts
(2) Souvenirs, giftware and decorative wares

22.0 MANUFACTURE OF SPORTS GOODS AND EQUIPMENT

(1) Sports goods and equipment

23.0 MANUFACTURE OF JEWELLERY AND RELATED PRODUCTS

(1) Jewellery
(2) Processed gems

24.0 MANUFACTURE OF PLASTIC PRODUCTS

(1) Decorative panels and ornaments
(2) Bathroom and kitchen accessories
(3) Plastic coils/mats
(4) Epoxy encapsulation moulding compound
(5) Geosystem products (cellular confinement system)

25.0 MISCELLANEOUS

(1) Wax products
(2) Microbials and probiotics

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* *Additional promoted activities and products for promoted areas, (other than the Federal Territory of Labuan) i.e. Sabah, Sarawak, Kelantan, Terengganu, Pahang and the district of Mersing in Johor.*

\# *Eligible for all applications received until 31 December 2010.*

Note: For the Federal Territory of Labuan, only the hotel business and tourist industry will qualify for the consideration of incentive gazetted for the promoted areas.

H Useful Addresses

MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY (MITI)

1.0 MITI HEADQUARTERS

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Website : http://www.miti.gov.my
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2.0 MITI OVERSEAS OFFICES

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Embassy of Malaysia in Belgium
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(Economic Section)
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Fax : (91-11) 2688 1538
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Counsellor (Economics)
Embassy of Malaysia
(Commercial Section)
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Minister Counsellor (Economy)
Department of Trade Affairs
Embassy of Malaysia
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Philippines
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Salcedo Village, Makati,
Metro Manila Philippines
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3516 International Court NW
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MALAYSIAN INDUSTRIAL DEVELOPMENT AUTHORITY (MIDA)

1.0 MIDA HEADQUARTERS

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2.0 MIDA STATE OFFICES

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Kedah & Perlis
Director
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United Arab Emirates
Consul General / Trade Commissioner
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New York
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Consulate General of Malaysia
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Sabah

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BURSA MALAYSIA
MARKETING COMMUNICATIONS
GROUP BUSINESS DEVELOPMENT
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and Environment
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EXPORT-IMPORT BANK OF MALAYSIA (EXIM BANK)
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HUMAN RESOURCE DEVELOPMENT BERHAD
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MINISTRY OF CULTURE, ARTS AND HERITAGE MALAYSIA
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APPENDIX

LAWS OF MALAYSIA

Act 661

FINANCE ACT 2006

Date of Royal Assent	…	29 December 2006
Date of publication in the *Gazette* … … …		31 December 2006

LAWS OF MALAYSIA

Act 661

FINANCE ACT 2006

ARRANGEMENT OF SECTIONS

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LAWS OF MALAYSIA

Act 661

FINANCE ACT 2006

An Act to amend the Income Tax Act 1967, the Real Property Gains Tax Act 1976, the Stamp Act 1949, the Petroleum (Income Tax) Act 1967, the Sales Tax Act 1972 and the Service Tax Act 1975.

[ ]

ENACTED by the Parliament of Malaysia as follows:

CHAPTER I

PRELIMINARY

Short title

1. This Act may be cited as the Finance Act 2006.

Amendment of Acts

2. The Income Tax Act 1967 [*Act 53*], the Real Property Gains Tax Act 1976 [*Act 169*], the Stamp Act 1949 [*Act 378*], the Petroleum (Income Tax) Act 1967 [*Act 543*], the Sales Tax Act 1972 [*Act 64*] and the Service Tax Act 1975 [*Act 151*] are amended in the manner specified in Chapters II, III, IV, V, VI and VII respectively.

CHAPTER II

AMENDMENTS TO THE INCOME TAX ACT 1967

Commencement of amendments to the Income Tax Act 1967

3. (1) Sections 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 25, paragraph 30*(a)*, section 31, paragraphs 32*(a)*, *(b)*, *(c)* and *(e)* and section 33 have effect for the year of assessment 2007 and subsequent years of assessment.

(2) Section 5, paragraph 24*(a)*, sections 26, 27, 28, 29 and paragraph 30*(b)* come into operation on 1 January 2007.

(3) Section 18 has effect for the year of assessment 2006 and subsequent years of assessment.

(4) Section 20 comes into operation on the coming into operation of this Act.

(5) Sections 21, 22, 23, paragraph 24*(b)*, paragraph 32*(d)* and section 34 are deemed to have come into operation on 2 September 2006.

Amendment of section 2

4. The Income Tax Act 1967, which is referred to as the "principal Act" in this Chapter, is amended in section 2—

(a) in subsection (1)—

(i) in the definition of "partnership", by inserting after the words "in a partnership" the words "and any association which is established pursuant to a scheme of financing in accordance with the principles of Syariah"; and

(ii) in the definition of "public entertainer", by substituting for the word "athlete" the word "sportsperson"; and

(b) in subsection (8), by substituting for the words "or the Securities Commission" the words ", the Securities Commission or the Labuan Offshore Financial Services Authority".

Amendment of section 6

5. Subsection 6(1) of the principal Act is amended by substituting for paragraph *(i)* the following paragraph:

"*(i)* subject to section 109D but notwithstanding any other provisions of this Act, income tax shall be charged for each year of assessment upon the income of a unit holder other than a unit holder which is a resident company which consists of income distributed by the unit trust referred to in section 61A at the appropriate rate as specified under Part X of Schedule 1 provided that the rates specified under such Part shall apply only for a period of five years commencing from the year of assessment 2007.".

Amendment of section 6A

6. Section 6A of the principal Act is amended—

(a) in subsections (1) and (4), by substituting for the words ", (3) and (3A)" the words "and (3)"; and

(b) by deleting subsection (3A).

Deletion of section 6B

7. The principal Act is amended by deleting section 6B.

Amendment of section 13

8. Subsubparagraph 13(1)*(b)*(ii)*(A)* of the principal Act is amended by inserting after the words "leave passages" the words "including meals and accommodation".

Amendment of section 22

9. Subsection 22(2) of the principal Act is amended—

(a) in subparagraph *(a)*(ii), by inserting after the semicolon the word "and";

(b) by substituting for the words "; and" at the end of paragraph *(b)* a full stop; and

(c) by deleting paragraph *(c)*.

Amendment of section 30

10. Subsection 30(4) of the principal Act is amended—

(a) by substituting for the word "and" at the end of paragraph *(a)* the word "or";

(b) by substituting for paragraph *(b)* the following paragraph:

"*(b)* any allowance or aggregate amount of allowances has been made under section 42 in computing the statutory income of the relevant person from a business for the basis period for a year of assessment (that basis period being prior to the relevant period) in respect of any expenditure incurred under Schedule 3,"; and

(c) by inserting before the words "the amount released" the words "and the whole or any part of a debt in respect of any such outgoing, expense, sum, rent or expenditure is released in the relevant period,".

Amendment of section 34

11. Subsection 34(6) of the principal Act is amended by substituting for paragraph *(k)* the following paragraph:

"*(k)* an amount equal to the expenditure incurred by the relevant

person in the relevant period for sponsoring any arts, cultural or heritage activity approved by the Ministry of Culture, Arts and Heritage:

Provided that the amount deducted in respect of expenditure incurred for sponsoring those activities shall not in aggregate exceed five hundred thousand ringgit of which the amount deducted in respect of expenditure incurred in sponsoring foreign arts, cultural or heritage activity shall not exceed two hundred thousand ringgit;".

Amendment of section 35

12. Subsection 35(2) of the principal Act is amended by substituting for the words "sections 33, 34, 34A and 34B" the words "this Act".

Amendment of section 39

13. Subsection 39(1) of the principal Act is amended—

(a) by inserting after subparagraph *(l)*(vii) the following subparagraph:

"(viii) the provision of a benefit or amenity to an employee consisting of a leave passage to facilitate a yearly event within Malaysia which involves the employer, the employee and the immediate family members of that employee; or"; and

(b) in paragraph *(m)*, by inserting after the words "*(l)*(i)" the words "and subject to subparagraph *(l)*(viii)".

Amendment of section 43

14. Section 43 of the principal Act is amended by deleting subsection (5).

Amendment of section 44

15. Section 44 of the principal Act is amended—

(a) in paragraph (1)*(d)*, by substituting for the words "or (11A)" the words ", (11A), (11B) or (11C)";

(b) in the proviso to subsection (6), by substituting for the word "five" the word "seven";

(c) by substituting for subsection (11A) the following subsection:

"(11A) There shall be deducted pursuant to this subsection

from the aggregate income of a person other than an offshore company and individual for the relevant year reduced by any deduction for that year in accordance with subsection (1) an amount equal to the payment of *zakat perniagaan* which is paid in the basis period for that relevant year to an appropriate religious authority established under any written law or any person authorized by such religious authority:

Provided that the amount to be deducted pursuant to this subsection shall not exceed one-fortieth of the aggregate income of that person in the relevant year."; and

(d) by inserting after subsection (11A) the following subsections:

"(11B) There shall be deducted from the aggregate income of a relevant person for the relevant year reduced by any deduction for that year in accordance with subsection (1) an amount equal to any gift of money or cost of contribution in kind made by the relevant person in the basis period for that year for any sports activity approved by the Minister or to any sports body approved by the Commissioner of Sports appointed under the Sports Development Act 1997 [*Act 576*]:

Provided that the amount to be deducted pursuant to this subsection shall not exceed the difference between the amount of seven per cent of the aggregate income of the relevant person and the total amount that has been deducted pursuant to the proviso to subsection (6) and subsection (11C).

(11C) There shall be deducted from the aggregate income of a relevant person for the relevant year reduced by any deduction for that year in accordance with subsection (1) an amount equal to any gift of money or cost of contribution in kind made by the relevant person in the basis period for that year for any project of national interest approved by the Minister:

Provided that the amount to be deducted pursuant to this subsection shall not exceed the difference between the amount of seven per cent of the aggregate income of the relevant person and the total amount that has been deducted pursuant to the proviso to subsection (6) and subsection (11B).".

Amendment of section 44A

16. Subsection 44A(9) of the principal Act is amended by substituting for paragraph *(b)* the following paragraph:

"*(b)* the surrendering company gives an incorrect information in the return furnished under section 77A in respect of the amount of adjusted loss surrendered, the Director General may, by a notice in writing, require the surrendering company to pay a penalty equal to the amount of tax which had or would have been undercharged by the claimant company in consequence of the incorrect information and where the surrendering company is dissatisfied with the penalty, the surrendering company may within thirty days of being notified appeal to the Special Commissioners as if the notice were a notice of assessment and the provision of this Act relating to appeals shall apply accordingly with any necessary modifications.".

Amendment of section 46

17. Section 46 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph *(f)*, by inserting after the word "accounting" the words ", Islamic financing";

(ii) by deleting the word "and" at the end of paragraph *(h)*;

(iii) in paragraph (i)—

(A) by substituting for the words "seven hundred" the words "one thousand"; and

(B) by substituting for the full stop at the end of that paragraph the words "; and"; and

(iv) by inserting after paragraph *(i)* the following paragraph:

"*(j)* an amount limited to a maximum of three thousand ringgit in respect of expenses expended or deemed expended under subsection (3) in the basis year for that year of assessment by that individual for the purchase of personal computer (not being a personal computer used for the purpose of his own business) as evidenced by receipt:

Provided that the deduction under this paragraph shall not be allowed for the two following years of assessment."; and

(b) in subsection (3), by substituting for the words "and *(i)*" the words ", *(i)* and *(j)*".

Amendment of section 60F

18. Subsection 60F(2) of the principal Act is amended—

(a) in the definition of "investment holding company", by inserting after the words "gross income" the words "other than gross income from a source consisting of a business of holding of an investment"; and

(b) by inserting before the definition of "investment holding company" the following definition:

' "business of holding of an investment" means business of letting of property where a company in any year of assessment provides any maintenance or support services in respect of the property;'.

Amendment of section 61A

19. The principal Act is amended by substituting for subsection 61A(1) the following subsection—

"(1) Where in the basis period for a year of assessment ninety per cent or more of the total income of the unit trust is distributed to the unit holder, the total income of the unit trust for that year of assessment shall be exempt from tax."

Amendment of section 91

20. Paragraph 91(4)*(a)* of the principal Act is amended by inserting after the word "made" the words "under this Act or the Real Property Gains Tax Act 1976 [*Act 169*]".

Amendment of section 107A

21. Subsection 107A(2) of the principal Act is amended by substituting for the words "an amount equal to ten per cent of the contract payment liable to deduction of tax under subsection (1) and the total sum" the words "a sum equal to ten per cent of the amount which he fails to pay, and that amount and the increased sum".

Amendment of section 109

22. Subsection 109(2) of the principal Act is amended by substituting for the words "an amount equal to ten per cent of the interest or royalty liable to deduction of tax under subsection (1) and the total sum" the words "a sum equal to ten per cent of the amount which he fails to pay, and that amount and the increased sum".

Amendment of section 109B

23. Subsection 109B(2) of the principal Act is amended by substituting for the words "an amount equal to ten per cent of the payments liable to deduction of tax under paragraph (1)*(a)*, *(b)* or *(c)* and the total sum" the words "a sum equal to ten per cent of the amount which he fails to pay, and that amount and the increased sum".

Amendment of section 109D

24. Section 109D of the principal Act is amended—

(a) in subsection (2), by substituting for the words "non-resident unit holder" the words "unit holder other than a unit holder which is a resident company"; and

(b) in subsection (3), by substituting for the words "an amount equal to ten per cent of the income liable to deduction of tax under that subsection and the total sum" the words "a sum equal to ten per cent of that amount, and the amount which he fails to pay and the increased sum".

Amendment of section 111

25. Subsection 111(1A) of the principal Act is amended by substituting for the words "subsection 77(1A)" the words "section 77A".

New Chapter 1A

26. The principal Act is amended by inserting after section 138 the following Chapter:

"Chapter 1A—Ruling

Public ruling

138A. (1) The Director General may at any time make a public ruling on the application of any provision of this Act in relation to any person or class of persons, or any type of arrangement.

(2) The Director General may withdraw, either wholly or partly, any public ruling made under this section.

(3) Notwithstanding any other provision of this Act, where a public ruling in subsection (1) applies to any person in relation to an arrangement and the person applies the provision in the manner stated in the ruling, the Director General shall apply the provision in relation to the person and the arrangement in accordance with the ruling.

Advance ruling

138B. (1) Subject to this section or any rules prescribed under this Act, on the application made by any person, the Director General shall make an advance ruling on the application of any provision of this Act to the person and to the arrangement for which the ruling is sought.

(2) An application under subsection (1) shall be made in the prescribed form and shall contain particulars as may be required by the Director General.

(3) The Director General may at any time withdraw any advance ruling made under subsection (1) by giving a notice in writing of such withdrawal to the person to whom the ruling applies.

(4) Notwithstanding any other provision of this Act, where an advance ruling applies to any person in relation to an arrangement and the person applies the provision in the manner stated in the ruling, the Director General shall apply the provision in relation to the person and that arrangement in accordance with the ruling.

(5) An advance ruling on any of the provision of this Act shall apply to a person in relation to an arrangement if the provision is expressly referred to in the ruling and for the basis period for year of the assessment for which the ruling applies.

(6) A ruling made under subsection (1) does not apply to a person in relation to an arrangement if—

(a) the arrangement is materially different from the arrangement stated in the ruling;

(b) there was a material omission or misrepresentation in, or in connection with the application of the ruling;

(c) the Director General makes an assumption about a future event or another matter that is material to the ruling, and that assumption subsequently proves to be incorrect; or

(d) the person fails to satisfy any of the conditions stipulated by the Director General.".

Special provision relating to section 138A

27. Notwithstanding the provisions of section 138A of the principal Act, any public ruling that has been issued by the Director General prior to the coming into operation of the section, is deemed to have been made under that section and have effect for the year of assessment 2007 and subsequent years of assessment.

Amendment of section 153

28. Section 153 of the principal Act is amended—

(a) by substituting for subsection (3) the following subsection:

"(3) For the purposes of this Act, "tax agent" means any professional accountant or person, approved by the Minister."; and

(b) in subsection (4), by substituting for the words "paragraph (3)*(b)* or *(c)*" the words "subsection (3)".

Amendment of section 154

29. Subsection 154(1) of the principal Act is amended by inserting after paragraph *(ea)* the following paragraphs:

"*(eb)* providing for the scope and procedure applied in relation to any ruling made under section 138A or 138B;

(ec) prescribing fees charged in relation to any ruling made under section 138B;".

Amendment of Schedule 1

30. Schedule 1 to the principal Act is amended—

(a) in Part I—

(i) in paragraph 1, by inserting after the words "1A, 2" the words ", 2A"; and

(ii) in paragraphs 2 and 2A, by substituting for the word "28" wherever appearing the word "27"; and

(b) by substituting for Part X the following Part:

"Part X

1. Notwithstanding Part I—

(a) and subject to paragraphs *(b)* and *(c)*, income tax shall be charged for a year of assessment on the income of a unit holder other than a unit holder which is a resident company consisting of income distributed to the unit holder referred to in section 109D which is derived from Malaysia at the rate of 15% of gross;

(b) and subject to paragraph *(c)*, income tax shall be charged for a year of assessment on the income of a unit holder which is a non-resident company consisting of income distributed to the unit holder referred to in section 109D which is derived from Malaysia at the rate of 27% of gross; and

(c) and income tax shall be charged for a year of assessment on the income of a unit holder which is a foreign institutional investor consisting of income distributed to the unit holder referred to in section 109D which is derived from Malaysia at the rate of 20% of gross.

2. In this Part, "institutional investor" means a pension fund, collective investment scheme or such other person approved by the Minister.".

Amendment of Schedule 3

31. Schedule 3 to the principal Act is amended—

(a) by deleting the words "Culture, Arts and" at the end of paragraph 37F; and

(b) in paragraph 42B, by inserting after the word "Education" the words "or Minister of Higher Education".

Amendment of Schedule 6

32. Schedule 6 to the principal Act is amended—

(a) in paragraph 15, by inserting after subparagraph (2) the following subparagraph:

"(3) In this paragraph, "compensation for loss of employment" shall include any payment made by an employer to an employee of his pursuant to a separation scheme where employees are given an option for an early termination of an employment contract provided that such scheme from which payment was made does not expressly or impliedly provide for the employee to be reemployed under any other scheme of employment by the same or any other employer.";

(b) by inserting after paragraph 25B the following paragraph:

"25C. Perquisite consisting of long service, past achievement or service excellence award, whether in money or otherwise, provided to an employee pursuant to his employment, limited to a maximum amount or value of one thousand ringgit for each employee for a year of assessment provided that exemption in respect of long service award shall apply only after the employee has exercised an employment for more than ten years with the same employer.**"**;

(c) in paragraph 32A, by inserting after the word "Education" the words "or Ministry of Higher Education";

(d) by substituting for paragraph 33 the following paragraph:

"33. Income of any person not resident in Malaysia for the basis year for a year of assessment, in respect of interest derived from Malaysia (other than such interest accruing to a place of business in Malaysia of such

person) and paid or credited by any person (whether the same person or not) carrying on the business of banking or finance in Malaysia and licensed under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983, or by any other institution approved by the Minister:

Provided that the exemption under this paragraph shall not apply to interest paid or credited on funds required for purposes of maintaining net working funds as prescribed by the Central Bank of Malaysia pursuant to section 37 of the Banking and Financial Institutions Act 1989 and subsection 5(2) of the Islamic Banking Act 1983, as the case may be.";
and

(e) by substituting for paragraph 34 the following paragraph:

"34. (1) Income of an individual derived from exercising an employment on board a ship used in a business operated by a person being a registered owner of a ship under the Merchant Shipping Ordinance 1952 who is resident in Malaysia.

(2) For the purpose of this paragraph "ship" means a seagoing ship other than a ferry, barge, tug-boat, supply vessel, crew boat, lighter, dredger, fishing boat or other similar vessel.".

Amendment of Schedule 7

33. Schedule 7 to the principal Act is amended—

(a) in paragraph 5, by inserting after the words "proportion as" the words "his statutory income in respect of"; and

(b) in paragraph 16, in the definition of "foreign income", by inserting after the word "Malaysia" the words "or in the case of bilateral credit, includes income derived from Malaysia charged to foreign tax".

Amendment of Schedule 7A

34. Schedule 7A to the principal Act is amended in the proviso to paragraph 3, by inserting after the words "the Federal Territory of Labuan," the words "Perlis,".

CHAPTER III

AMENDMENTS TO THE REAL PROPERTY GAINS TAX ACT 1976

Commencement of amendments to the Real Property Gains Tax Act 1976

35. (1) Section 36 is deemed to have come into operation on 1 October 2005.

(2) Section 37 comes into operation on the coming into operation of this Act.

(3) Section 38 is deemed to have come into operation on 2 September 2006.

Amendment of section 9

36. The Real Property Gains Tax Act 1976, which is referred to as the "principal Act" in this Chapter, is amended in the national language text, by deleting the words "orang atau" in subsection 9(3).

Amendment of section 15

37. Paragraph 15(3)*(a)* of the principal Act is amended by inserting after the word "made" the words "under this Act or the Income Tax Act 1967".

Amendment of Schedule 2

38. Schedule 2 to the principal Act is amended—

(a) by substituting for paragraph 16 the following paragraph:

"16. Where a contract for the disposal of an asset is conditional and the condition is satisfied (by the exercise of a right under an option or otherwise), the acquisition and disposal of the asset shall be regarded as taking place at the time the contract was made, unless—

(a) the acquisition or disposal requires the approval by the Government or an authority or committee appointed by the Government, the date of disposal shall be the date of such approval; or

(b) the approval referred to in subparagraph *(a)* is conditional, the date of disposal shall be the date when the last of all such conditions is satisfied."; and

(b) by inserting after paragraph 17 the following paragraph:

"Transfer of assets into stocks

17A. Notwithstanding any other provisions of this Act—

(a) if an asset acquired or held by a person is taken into the trading stock of the person, there shall be deemed to be a disposal of chargeable asset; and

(b) the disposal price of the chargeable asset shall be equal to the market value at the date the asset is taken into stock.".

CHAPTER IV

AMENDMENTS TO THE STAMP ACT 1949

Commencement of amendments to the Stamp Act 1949

39. This Chapter is deemed to have come into operation on 2 September 2006.

Amendment of section 2

40. The Stamp Act 1949, which is referred to as the "principal Act" in this Chapter, is amended in section 2 by inserting after the definition of "settlement" the following definition:

' "small and medium enterprise" means—

(a) in relation to the manufacturing, manufacturing related services and agro-based industries sectors, an enterprise with full-time employees not exceeding one hundred and fifty people or annual turnover not exceeding twenty-five million ringgit; and

(b) in relation to the services, primary agriculture, and information and communication technology sectors, an enterprise with full-time employees not exceeding fifty people or annual turnover not exceeding five million ringgit;'.

Amendment of section 5A

41. The principal Act is amended by deleting section 5A.

Amendment of section 7

42. Section 7 of the principal Act is amended by substituting for subsection (1) the following subsection:

"(1) Subject to any rules made under paragraph 82*(b)*, all duties with which any instruments are chargeable under this Act shall be paid, and payment shall be indicated on such instrument, by means of an adhesive stamp or by affixing an official receipt to such instrument.".

Amendment of section 9

43. Section 9 of the principal Act is amended—

(a) in subsection (3), by inserting after the word "books" the words ", records and documents"; and

(b) by inserting after subsection (3) the following subsection:

"(4) For the purpose of subsection (3), the banker, dealer or insurer shall keep and retain the books, records and documents in connection with the issue of such cheques, contract notes or policies of insurance for a period of seven years from the year in which such cheques, contract notes or policies of insurance are issued.".

Amendment of section 57

44. Section 57 of the principal Act is amended—

(a) by deleting paragraph *(c)*; and

(b) by substituting for paragraph *(e)* the following paragraph:

"*(e)* the stamp on any promissory note which from any omission or error has been spoiled or rendered useless, although the same, being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped promissory note, is produced identical in every particular except in correction of the error or omission, with the spoiled note;".

Amendment of section 80

45. Section 80 of the principal Act is amended—

(a) in subsection (1A)—

(i) in paragraph (i), by inserting after the word "instrument" the words "or all instruments in relation to any scheme"; and

(ii) in paragraph (ii), by substituting for the words "instrument is" the words "instrument or all instruments in relation to any scheme are"; and

(b) in subsection (3), by inserting after the words "or (2)" the words "or any exemption, reduction or remission made under subsection (1A)".

Amendment of First Schedule

46. Item 27 of the First Schedule to the principal Act is amended by substituting for subitem *(a)*(i) the following subitem:

"(i) where the loan is to a small and medium enterprise or financing is provided to a small and medium enterprise according to the syariah—

For an amount not exceeding RM250,000 of the aggregate loans or of the aggregate financing under the Syariah in a calendar year;	RM0.50 for every RM1,000 or fractional thereof
For each additional RM1,000 not exceeding RM1,000,000;	RM2.50 for every RM1,000 or fractional thereof
For each additional RM1,000 or part thereof	RM5.00".

CHAPTER V

AMENDMENTS TO THE PETROLEUM (INCOME TAX) ACT 1967

Commencement of amendments to the Petroleum (Income Tax) Act 1967

47. This Chapter has effect for the year of assessment 2008 and subsequent years of assessment.

Amendment of section 16

48. The Petroleum (Income Tax) Act 1967, which is referred to as the "principal Act" in this Chapter, is amended in subsection 16(7E) by deleting the words "Culture, Arts and".

Amendment of section 22

49. Section 22 of the principal Act is amended—

(a) in the proviso to subsection (1), by substituting for the word "five" the word "seven"; and

(b) by inserting after subsection (1D) the following subsections:

"(1E) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to any gift of money or cost of contribution in kind made by the relevant person in the basis period for that year for any sports activity approved by the Minister or to any sports body approved by the Commissioner of Sports appointed under the Sports Development Act 1997:

Provided that the amount to be deducted pursuant to this subsection shall not exceed the difference between the amount of seven per cent of the statutory income of the relevant person and the total amount that has been deducted pursuant to the proviso to subsection (1) and subsection (1F).

(1F) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to any gift of money or cost of contribution in kind made by the relevant person in the basis period for that year for any project of national interest approved by the Minister:

Provided that the amount to be deducted pursuant to this subsection shall not exceed the difference between the amount of seven per cent of the statutory income of the relevant person and the amount that has been deducted pursuant to the proviso to subsection (1) and subsection (1E).".

CHAPTER VI

AMENDMENTS TO THE SALES TAX ACT 1972

Amendment of section 31C

50. The Sales Tax Act 1972 is amended in section 31C—

(a) in the shoulder note, by inserting after the word "for" the words "doubtful debt or";

(b) in paragraph (1)*(b)*, by inserting after the words "such person" the words "has been provided in his accounts as doubtful debt or"; and

(c) by substituting for subsection (4) the following subsection:

"(4) For the purpose of this section—

"bad debt" means the outstanding amount of the payment in respect of the sale of taxable goods including the sales tax which is due to the person but has not been paid to, and is irrecoverable by the person;

"doubtful debt" means a provision made with respect to the outstanding amount in the person's accounts consistent with the generally accepted accounting principles.".

CHAPTER VII

AMENDMENTS TO THE SERVICE TAX ACT 1975

Amendment of section 21B

51. The Service Tax Act 1975 is amended in section 21B—

(a) in the shoulder note, by inserting after the word "for" the words "doubtful debt or";

(b) in paragraph (1)*(b)*, by inserting after the words "such person" the words "has been provided in his accounts as doubtful debt or"; and

(c) by substituting for subsection (4) the following subsection:

"(4) For the purpose of this section—

"bad debt" means the outstanding amount of the payment in respect of the provision of taxable services including the service tax which is due to the person but has not been paid to, and is irrecoverable by the person;

"doubtful debt" means a provision made with respect to the outstanding amount in the person's accounts consistent with the generally accepted accounting principles.".

DICETAK OLEH
PERCETAKAN NASIONAL MALAYSIA BERHAD,
KUALA LUMPUR
BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA