

NOTES ON LEGISLATION

INCOME TAX (AMENDMENT) ACT, 1977

The above Act has changed the outlines of taxation in Malaysia in two significant places: one is the widening of the tax net to include co-operatives within the ambit of taxation by granting exemption for the first five years only and the other, in the field of personal taxation, is the tax rebate and exemption of pensions from taxation. These and other changes are briefly described below under the respective captions.

Co-operative Societies

Co-operative Societies, especially in developing countries, have generally been granted special privileges in terms of taxation. Thus, in Malaysia until the development brought about by the above mentioned Act Co-operative Societies have been exempt (paragraph 12, Part I of Schedule 6) from taxation in cases where the principal activities consisted of —

- (a) transactions with its members or other co-operative societies so registered;
- (b) marketing the produce or products of its members; or
- (c) selling to its members good purchased for the purpose of being so sold.

However, where Co-operative Societies did not fall within the above conditions, the tax imposed was at 40%.

With effect from Year of Assessment 1977 a new paragraph 12 has been substituted and following the new provisions Co-operative Societies are taxed on the following basis:—

- (1) Income for the first 5 years period from the date of registration is exempt.
- (2) Income from the 6th year onward is taxable provided the co-operative society has members' funds more than \$500,000 on the first day of the basis period.
- (3) The tax is on scale rates as follows:

| <i>Chargeable Income</i> | <i>Rate of Tax</i> |
|---|--------------------|
| For every ringgit of the first \$10,000 | 5 per cent |
| For every ringgit of the next \$10,000 | 7 per cent |
| For every ringgit of the next \$10,000 | 10 per cent |
| For every ringgit of the next \$10,000 | 14 per cent |
| For every ringgit of the next \$10,000 | 20 per cent |
| For every ringgit of the next \$25,000 | 23 per cent |
| For every ringgit of the next \$25,000 | 27 per cent |

| | |
|---|-------------|
| For every ringgit of the next \$50,000 | 30 per cent |
| For every ringgit of the next \$100,000 | 34 per cent |
| For every ringgit of the next \$250,000 | 37 per cent |
| For every ringgit exceeding \$500,000 | 40 per cent |

Personal Taxation

(a) Tax Rebate

With effect from Year of Assessment 1977, a new Section 6A has been introduced; the effect of which is to give tax rebates as follows:—

- (i) A sum of \$60/= for an individual who qualifies for personal relief under Section 46(a). But this does not apply to a wife who has elected for separate taxation.
- (ii) A sum of \$30/= in respect of an individual who qualifies for wife relief under Section 47(1) or (3).
- (iii) Where rebate exceeds the income tax charged, the excess is not paid to the individual nor can it be carried forward.

The above reliefs in effect are tantamount to an increase in personal reliefs but the method of granting the reliefs has ensured that the benefit is more to the lower income groups.

(b) Exemption of Pensions

A new paragraph 30 to Part I Schedule 6 of the Income Tax Act, 1967 has been introduced to the effect of granting exemption in respect of pensions derived from Malaysia and paid to *resident* persons in Malaysia for a basis year for a year of assessment in respect of services rendered in exercising a former employment in Malaysia or under an approved Scheme.

Paragraph 30 is effective from Year of Assessment 1977 — which means pensions paid for basis year 1976 et seq. Note that the taxpayers receiving the pension must be *resident* in Malaysia to qualify for exemption. Therefore, taxpayers resident in the United Kingdom, India, Ceylon and elsewhere receiving pensions derived from Malaysia are not exempt.

Long-term Loans

With effect from 1st January 1977, interest derived from Long-term Loans by a non-resident taxpayer is exempt. A new paragraph 31 to Part I, Schedule 6 has brought about this change. Long-term Loan is defined in Section 2, Income Tax Act 1967 as meaning "any loan made or funds deposited in Malaysia on or after 1st January, 1977 for a period of not less than three years by a person not resident in Malaysia from funds remitted from outside Malaysia".

The scope of this definition is not entirely clear. Does it include a loan, say, of \$1,000,000 taken on 1st January 1977 and repayable in five years but instalments of repayment begin immediately on taking the loan or

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before the three years limit? Thus, if \$300,000 of the loan is paid within 2 years, does that portion qualify as a Long-term Loan?

ACT A379. . . SUPPLEMENTARY INCOME TAX (AMENDMENT ACT, 1977

The amendments brought about by the above Act are all in respect of development tax. Some basic changes have been made to the computation of development tax. The changes are as follows.

Companies

With effect from Year of Assessment 1977 et seq. there is no *Minimum* development tax on companies. The rest of the provisions remain in force.

Individuals

In case of individuals the development tax is at 5%, only on the *excess*, if any, of \$3,000/=. Prior to this amendment the tax was 5% if the development income exceeded \$3,000/=. But now it is only confined to the *excess* of over \$3,000/=.

Example

Development income \$5,000. Therefore, Development tax is 5% of \$2,000 = \$100/=.

In case of individuals in a partnership the tax is 5% on the *excess*, if any, of \$2,000/=. Prior to this amendment the tax was 5% if development income exceeded \$3,000.

The above changes are effective from Year of Assessment 1977.

Trade Associations

The minimum for trade Associations is \$100/=. This removes the anomaly that existed prior to this amendment when trade associations did not suffer a minimum development tax of \$100/=. See Volume one, *The Malaysian Tax Journal*, at page 53 for illustrations of the anomaly.

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HIRE-PURCHASE (RECOVERY OF POSSESSION AND MAINTENANCE OF RECORDS BY OWNERS) REGULATIONS 1976

Parliament's avowed purpose behind the passing of the Hire Purchase (Amendment) Act¹ was to consolidate the protection which the principal Act, the Hire Purchase Act 1967 had provided to hirers against the harsh and unconscionable practices of some unscrupulous owners and their agents. To enforce the protective provisions of the two statutes, the amending Act created the post of Controller of Hire Purchase,² a government officer to be appointed by the Minister of Trade and Industry.³ In the sensitive area of repossession the amending Act restricted the random use of this frequently abused privilege by providing that the right is not to be exercised until there are at least two successive defaults of payment or a default in respect of the last payment.⁴ In addition owners and their agents had to comply with any regulations governing repossession which the Minister of Trade and Industry was empowered to make.⁵ These eagerly awaited regulations have now been gazetted⁶ as the Hire-Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976 and will certainly provide a powerful and effective safeguard to hirers in one of the most abused areas of hire-purchase practice.

Rule 1 provides the citation for the Regulations. Rule 2 deals with the protection already given by the amending Act by providing that a owner shall not serve a notice of repossession (in the form set out in the Fourth Schedule) in pursuance of section 15 of the principal Act unless there has been two defaults of payment of instalments or a default in respect of the last payment. Its effect appears to be that if the specified defaults have not taken place a mere service of the Fourth Schedule notice is enough to bring about a breach of the rule and make an owner liable for prosecution. Rule 9 makes a breach of any of the rules prescribed by the Regulations "an offence against the Act". Under s.45 of the Hire Purchase Act 1967 an offence against the Act carries a term of imprisonment not exceeding

¹Noted in [1975] J.M.C.L. 350-354 (P. Balan).

²See s.4 of the amendment Act, which forms S.2A of the principal Act

³The appointment was filled on 1st December 1976, vide P.U. (B) 6

⁴See s.5 of the amendment Act

⁵*Ibid.*, S. 12

⁶Federal Gazette, 6th January 1977