# CURRENT DEVELOPMENTS IN SINGAPORE INCOME TAX LAW

Income tax has been for a long time the largest single source of revenue in Singapore. In 1970, it netted $251,082,584, or approximately 21% of gross revenue; in 1971, $317,579,532, or approximately 22% of gross revenue; in 1972, $403,971,380, or approximately 24% of gross revenue; in 1973, $562,621,868, or approximately 27% of gross revenue.[1] According to a Senior Assistant Commissioner of Inland Revenue, about $845,000,000 was collected in 1974,[2] and income tax now accounts for more than one-third of the Republic's total revenue.[3] The administration and working of the income tax laws are thus matters of no small concern both to the Government and the public: the former having to balance its desire not to hinder economic growth by the imposition of punitive tax measures with the need to fill its coffers to meet increasing expenditure on essential social and development projects, and the latter obliged to contribute according to rules decided by its elected representatives. Occasionally murmurings are heard reflecting the sentiment that some equity at least should prevail in the formulation of tax policies. As far as the Singapore Government is concerned, its underlying tax policy has been consistently:

> to give priority to economic growth, which in turn would bring increased revenues to finance growing public expenditure. At the same time we would improve our tax collection machinery so as to maximise the yield from existing taxes.[4]

Considerations of a purely social or non-economic nature are thus of secondary importance, although this is not to say that they are entirely absent.[5]

This year has witnessed a flurry of legislative activity in the area of income taxation. Two Acts — the Income Tax (Amendment) Act, 1975 and the Economic Expansion Incentives (Relief from Income

[1] See the *Annual Report* of the Inland Revenue Department for the respective years.

[2] In a letter published in the *New Nation,* 15th February, 1975.

[3] As stated by the Minister for Finance during the second reading in Parliament of the Income Tax (Amendment) Bill: Republic of Singapore, *Parliamentary Debates — Official Report* (hereafter referred to as "*Hansard*"), Vol. 34, col. 1100.

[4] Quoted from the Minister's 1975 Budget Statement: *ibid*., Vol. 34, col. 190. See also pronouncements to the like effect in previous Budget Statements, e.g. *ibid*., Vol. 31, col. 534; Vol. 32, col. 475; Vol. 33, cols. 73, 74.

[5] Take, for example, the case of child relief, governed by the Fifth Schedule to the Income Tax Act. This relief is granted simply because it is thought only fair that the Comptroller should take into account a taxpayer's expenditure on the maintenance of his children. However, even here, one cannot say that the recent curtailment of child relief for a fourth or subsequent child born on or after 1st August, 1973 (paragraph 3(a) of the Fifth Schedule) is not without some economic motivation: the taxpayer must be discouraged from wanton procreation, the message being, "the more you have, the less they get."

Tax) (Amendment) Act, 1975[6] — amending the existing law contained in the Income Tax Act[7] and the Economic Expansion Incentives (Relief from Income Tax) Act[8] have been passed by Parliament, and are currently in force, while a Bill seeking to introduce further modifications in the law has just received its first reading in Parliament.[9] The two amending Acts do not indicate any change in the Government's fiscal policy, nor do they alter the basic income tax structure created by earlier legislation. Indeed, they seek primarily to implement the Government's avowed aim of stimulating economic growth, which has since the "energy crisis" of 1973 become an increasingly difficult task; ensuring a more efficient administrative and enforcement machinery; and extending or restricting reliefs for the general body of taxpayers with a view to eliciting appropriate responses from them. The recent Bill — the Income Tax (Amendment No. 2) Bill[10] — attempts in the main to clamp down on the scope of existing reliefs and allowances, while considerably revising the provisions on the deduction and collection of withholding tax. It is proposed to examine at length only those amendments having the force of law at the time of writing (15th November, 1975), although brief mention will be made of the more important clauses in the Bill. References in the text and footnotes to sections of the 1975 Acts (and to clauses in the Bill) will be italicised, while references to sections from the respective principal Acts will appear in normal type. The Minister for Finance will be referred to as "the Minister".

## *THE INCOME TAX (AMENDMENT) ACT, 1975*

The Income Tax (Amendment) Bill containing eighteen clauses was introduced in Parliament on 25th February, 1975, and passed without amendment (except for the correction of an orthographic error in clause 6) one month later on 27th March. The President's assent was given on 2nd April, and the Act came into force on the date of its publication in the *Gazette,* viz. 4th April.

The amendments, many of which have retrospective effect, fall into five categories:

1) provisions giving legislative authority to previously granted extra-statutory concessions, and one new concession;

2) provisions restricting existing reliefs;

3) provisions governing the taxation of interest and gains from the sale of Negotiable Certificates of Deposit;

4) provisions to strengthen the law against income tax offenders; and

5) miscellaneous amendments.

Categories 1) and 4) constitute the greater part of the Act.

[6] Act No. 4 of 1975, and Act No. 27 of 1975 respectively.
[7] Cap. 141, Singapore Statutes, Rev. Ed. 1970 (as amended by the Income Tax (Amendment) Act, 1973).
[8] Cap. 135, Singapore Statutes, Rev. Ed. 1970. Section 2 states that the Act shall, unless otherwise expressly provided for, be construed as one with the Income Tax Act.
[9] On Tuesday, 11th November, 1975.
[10] G.N. No. B 51/75.

**Concessions given legislative authority**

The Act contains seven existing extra-statutory concessions, which the Government has now decided to allow the taxpayer to claim as of right, and one new concession. The latter and two of the former represent fiscal incentives designed to stimulate the development of Singapore as a maritime centre, while the remaining five deal with the tax treatment of annuities, a double deduction for certain expenses incurred in connection with the export of locally manufactured goods, accelerated depreciation for anti-pollution equipment, further child relief and relief for the maintenance of certain dependants.

*Incentives for shipping*

Singapore is currently the fourth largest port in the world. Although its entrepot role has been gradually declining over the last decade, expanding trade, improved harbour facilities and a phenomenal growth of the shipbuilding and shiprepairing industries have vindicated the Government's drive to make Singapore an international centre for shipping. We may in this respect mention two significant events that occurred towards the end of 1968 — the passage of the Merchant Shipping (Amendment) Act, 1968 and the formation of Neptune Orient Lines, Singapore's national shipping line.

The 1968 Amendment rejected the notion that a "genuine link" should exist between a country and the owners of ships registered in that country, and converted Singapore's Registry of Ships — a closed registry since it was established in 1966 — into an open one. The Minister for Communications had lamented the lack of growth of Singapore-registered ships, and expressed the hope that this move, coupled with the offer of "attractive incentives", would encourage more ships to fly the Singapore flag.[11] These incentives were: a low initial registration fee and annual tonnage tax, with a guarantee that neither fee nor tax would be increased for a period of twenty years from the date of initial registration of the ship; a refund of part of the annual tonnage tax if the ship carried a certain percentage of Singapore seamen; no requirement that the ship be re-surveyed on being transferred to the Singapore Registry, if it already possessed valid certificates; a reduction in the registration fee on a change of ownership without a change of flag; and exemption from income tax (this exemption, introduced in 1969, is governed by section 13A of the Income Tax Act). A nation blessed with a strong, active merchant fleet would normally find its balance of payments position greatly enhanced by "invisible" earnings from this sector.[12] However, in the case of countries of convenience, the same does not as a rule hold true. What benefits then could be said to accrue to Singapore from this course of action? The main benefit expected — in fact, the motivating consideration behind the opening of the Registry, as may be gathered from statements made by the Minister for Communications on moving the second reading of the Bill on 23rd December, 1968[13] — was the

[11] *Hansard,* Vol. 28, cols. 802, 803.
[12] See *infra,* pp. 242, 243.
[13] *Hansard* Vol. 28, col. 806. See also statements to the like effect by the Parliamentary Secretary to the Minister for Finance during the second reading of the 1969 Bill which was to provide for income tax exemption on the income derived from the operation of Singapore-registered ships: *ibid*., Vol. 29, col. 267.

creation of more employment opportunities for Singapore citizens. Other benefits mentioned from time to time included: extra revenue gained by having a larger number of vessels pay the registration fee and annual tonnage tax,[14] national prestige,[15] added impetus to industries in the areas of bunkering and shiprepairing,[16] and a greater voice in international shipping circles.[17] Be this as it may, the Government has decided that it is desirable to encourage both local and foreign shipowners to register their ships in Singapore, and fiscal incentives have played no small role in the implementation of this policy. That it has succeeded is illustrated by the fact that although at the end of 1968 the gross registered tonnage was only 252,940, by 1971 the figure had risen to 718,799, and by 1972, it had climbed even more dramatically to 1,450,820.[18] As at June, 1975, the tonnage recorded exceeded 4 million tons.[19]

The developing countries have recently been showing greater interest in establishing their own shipping fleets. They have come to recognise that the traditional hold of the established maritime nations on the sea lanes of the world worked, and continues to work, to their disadvantage.[20] Lacking their own modes of transport to ferry their raw materials to eager consumers in the more developed countries, they are forced to rely on the shipping lines of the latter. In this realm, the real issue is not whether it is the buyer or the seller who by the contract pays for the carriage, but which country ultimately bears the cost or reaps the reward represented by the freight on the goods. If the buyer can nominate a carrier which is of his own nationality, then even if the contract for the sale of the goods is f.o.b. (free on board) so that he must meet the cost of freight, the value added to the goods becomes a gain for his country by forming part of its "invisible" earnings. On the other hand, if the seller can nominate the carrier, his country stands to gain at the expense of the buyer's country. It is perhaps no coincidence that, in the trade between

[14] According to the Deputy Director of the Marine Department, quoted in "Sailing through the stigma of 'convenience'", *The Straits Times,* 10th April, 1975. On the other hand, the Minister for Communications had pointed out earlier that "with income tax exemption and very low fees, we could not hope to gain much by way of revenue although the acquisition of a large tonnage would bring in some useful revenue": *Hansard*, Vol. 28, col. 806.

[15] "To enhance Singapore's status as one of the busiest ports in the world, it is felt that further impetus must be given to the registration of more ships": so said the Minister for Finance in his 1973 Budget Statement, *ibid*., Vol. 32, col. 480.

[16] *Loc. cit.* On the other hand, it has been admitted that many Singapore-registered ships do not make Singapore a regular port of call: "Sailing through the stigma of 'convenience' ", *supra.*

[17] It may be noted that Article 13(1) of the Brussels Protocol to the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924 provided that the Protocol was to come into force only upon the deposit of ten instruments of ratification or accession, "of which at least five shall have been deposited by States that have a tonnage equal or superior to one million gross tons of tonnage."

[18] See the *Annual Report* of the Marine Department for the respective years.

[19] *The Straits Times*, 27th June, 1975, p. 11.

[20] Report by the United Nations Conference on Trade and Development (UNCTAD) Secretariat, *Bills of Lading* (TD/B/C.4/ISL/6/Rev.l), 1971. See also Rajwar, Valente, Oyevaar and Malinowski, "Shipping and Developing Countries", *International Conciliation,* No. 582 (March 1971), New York: Carnegie Endowment for International Peace, where the points of view of both developed and developing countries are eloquently put forward.

developed and developing countries, importers in the former would often insist on shipment on f.o.b. terms, thereby giving themselves the right to nominate the carrier, while importers in the latter would be obliged to buy goods on c.i.f. (cost, insurance and freight) terms, thus allowing the exporter to choose the carrier. Other tactics adopted by the older maritime nations (in effect, the developed countries), such as cargo reservation, and their domination of the liner conference system entrenched the established order and did not assist the developing countries in their efforts to secure for themselves a fairer share of international trade with the formation of their own national shipping lines. It was again this background, unrelieved by the virtual stranglehold over freight rates maintained by the conferences, notably the Far East Freight Conference, that Neptune Orient Lines Ltd. made its appearance in December, 1968 as the Republic's national shipping line. The press commented shortly afterwards that: "with Singapore having its own national shipping line, Singapore-manufactured goods [were] expected to become more competitive abroad. At the moment, high freight charges [had] pushed up prices."[21] It was also the hope that by building the nucleus of a merchant marine, earnings from invisibles would be boosted,[22] since the Government's priority was to increase not only domestic exports, but also invisible earnings:[23] the latter playing year after year a larger role in underwriting Singapore's ever widening trade deficit, a characteristic of the country's economy, we are told, "ever since Sir Stamford Raffles landed here,"[24] Developments in this field are in line with the current international mood, which is one for reform, as symbolised by the adoption of the United Nations General Assembly without vote on 1st May, 1974 of a Declaration on the Establishment of a New International Economic Order to "correct inequalities and redress existing injustices".[25] The shipping reforms envisaged in a subsequent Programme of Action on the Establishment of a New International Economic Order, which was in like fashion endorsed by the General Assembly, are designed in the long run to take world shipping out of the control of the traditional maritime powers, and one consequence is, as a journalist recently remarked, that "Singapore is bound to grow in importance as a result of the diffusion of shipping decision-making into the region."[26] In the

[21] *The Straits Times,* 1st February, 1969. Neptune Orient Lines now has a fleet of twenty-one ships, including bulk carriers, tankers, supertankers and cargo vessels, and recently became the first regional line to run its own containership: *ibid.*, 6th November, 1975.

[22] *Hansard,* Vol. 31, col. 661.

[23] The Minister's 1972 Budget Statement: *ibid.*, Vol. 31, col. 506.

[24] The words of Dr. Goh Keng Swee, now Minister for Defence: *ibid.*, Vol. 28, col. 239.

[25] Resolution 3201 (S-VI), as reproduced in *International Legal Materials,* Vol. XIII, 1974, pp. 715 *et seq.*

[26] Dick Wilson, "The New International Economic Order": a paper presented at a Seminar *(The New International Economic Order and UNCTAD IV: The Implications for Singapore*) organised by the Economic Society of Singapore and the Economic Research Centre, University of Singapore, November 2-3, 1975, p. 10. The Programme of Action — Resolution 3202 (S-VI) — is reproduced in *International Legal Materials,* Vol. XIII, 1974, pp. 720 *et seq.* Paragraph 4 of Part I reads:

> "All efforts should be made:
>
> a) To promote an increasing and equitable participation of developing countries in the world shipping tonnage;
>
> b) To arrest and reduce the ever-increasing freight rates in order to reduce the cost of imports to, and exports from, the developing countries;

meantime, caught in the gap between ideals and reality, the Republic strives within the limits of the present system to make a name for itself by the size of its fleet, the calibre of its seafarers and the nature and quality of the shipping services it offers.

The fiscal incentives contained in *sections 3(a), 4(a)* and *5(b)* should be considered in the above context. The first two represent previously announced concessions, while the third is new.

*Section 3(a)* amends section 10(4), which provided that a balancing charge was to be deemed to be income chargeable with tax. This was not altogether unreasonable in a system which allowed some capital expenditure to be set off against taxable profits.[27] However, in his 1974 Budget Statement, the Minister proposed to remove this potential liability to tax in the event of the sale of a Singapore-registered ship. It was felt that if this liability was not removed, "it could discourage local shipowners from upgrading their fleets through disposal of older vessels and possibly act as a disincentive to foreign shipowners from setting up shipping companies in Singapore to operate Singapore-registered ships."[28] This concession is now embodied in the new section 10(4). However, it is to be noted that the terms of the relief under this section are both wider and narrower than those announced by the Minister. The relief is wider in that the exemption applies regardless of the circumstances under which a balancing charge arises, whereas the concession announced in 1974 was expressed to exempt from tax only the balancing charge arising on a sale of the ship. Under the provisions of sections 17 and 20, it is clear that a sale is not the only event that may give rise to a balancing charge: if the asset is destroyed, lost or given away, to cite a few examples, that is sufficient. On the other hand, the amendment is narrower in that while the announcement conferred the exemption on all Singapore-registered ships, the statutory exemption now applies only to "a Singapore ship the income derived from the operation of which would be income of a shipping enterprise within the meaning of section 13A of this Act." This in effect restricts the exemption to sea-going Singapore-registered ships deriving income from the carriage (other than within the limits of the port of Singapore) of passengers, mails, livestock or goods — ordinary passenger ferries, barges, fishing trawlers, *tongkangs* and miscellaneous local harbour craft are thus excluded — and owned or operated by a company. The new section 10(4) has retrospective effect from the year of assessment 1974.[29]

*Section 4(a)* adds to the list of tax exempt income found in section 13(1) by introducing a new paragraph (*w*). This paragraph exempts from tax "income derived from an employment exercised on board a Singapore ship. . ., if the employment is exercised substantially outside Singapore." This concession was first announced in the Minister's 1973 Budget Statement, and was there expressed to apply to all crew

c) To ensure the early implementation of the code of conduct for liner conferences .. ."

[27] The scheme of capital allowances is contained in sections 16—25. The prohibition against the deduction of capital expenditure from profits found in section 15(c), (*d*) is not an absolute one: section 15 by its terms is to be read "subject to the provisions of this Act", i.e. subject to, *inter alia,* sections 16—25.

[28] *Hansard,* Vol. 33, col. 72.

[29] See *section 1(2).*

working on Singapore-registered ships.[30] The new section 13(1)(w) requires the employment to be exercised substantially outside Singapore, so this again excludes the crew of craft plying local waters. The incentive operates as an indirect inducement to shipowners to have their ships registered in Singapore by enabling them to offer more attractive wages to their crew. In the debate on the Bill, the Minister promised that, although it was not possible to lay down a strict legal definition of the word "substantially", some consideration would be given to the formulation of an administrative definition as a practical guideline; and he went on to indicate that problems might arise because a seaman who was from Singapore might return to Singapore for an indeterminate period, e.g. to spend his leave or for other purposes.[31] The implication was that the word was to be given a purely quantitative meaning based on the actual length of time spent abroad by a seaman. It is submitted that the underlying considerations should be: firstly, what by his contract are the duties of the seaman's employment, and secondly, where in fact are those duties performed? A finding that a seaman is physically present in Singapore for a major part of the year should not be fatal to his case for tax exemption, if the seat of his duties lies abroad, and those duties (can it be seriously argued that going on leave forms part of his duties?) are executed substantially outside Singapore. Even if the test along solely quantitative lines based on a seaman's actual presence in Singapore is rejected, this does not mean that all difficulties arc solved: one still has to give thought to a correct application of the accepted interpretation. Thus, if it is found that the seaman's duties are performed equally in Singapore as well as outside Singapore, is the employment exercised "substantially outside Singapore"? Or if one-quarter of the duties is performed abroad, is the income still within the exemption? One solution is to look at the main duties of the employment, so that if it could be said on a common-sense approach that a significant portion requires attention outside Singapore, then notwithstanding that a significant portion also requires attention within Singapore, the employment is exercised "substantially outside Singapore". In this respect, it is felt that duties to be performed in Singapore are irrelevant, since the paragraph reads, "if the employment is exercised substantially outside Singapore", and not, "if the employment is not exercised substantially in Singapore". This concession operates with retrospective effect from the year of assessment 1974.[32]

Under section 13A, the income of a shipping enterprise which is derived from the operation of Singapore-registered ships on or after 1st January, 1969 (the date the Singapore Registry became an open one) is exempt from tax and, even though the company is resident in Singapore,[33] it may distribute such exempt income as dividends without having to comply with the stringent requirements of section 44.[34]

[30] *Hansard,* Vol. 32, col. 479.
[31] *Ibid*., Vol. 34, col. 1105.
[32] See *section 1(2).*
[33] A company is resident in Singapore if the control and management of its business is exercised in Singapore: section 2.
[34] Section 13A(6)(e). The unfortunate tax consequences of disregarding section 44 may be gathered from the cases of *Government of the Federation of Malaya* v. *A. Omnibus Co. Ltd.* [1963] M.L.J. 14; *Comptroller of Income Tax* v. *B. & C. Co. Ltd.* [1966] 1 M.L.J. 286; and *Sim Lim Investments Ltd.* v. *Attorney-General, Singapore* [1969] 2 M.L.J. 56.

Moreover, such dividends are not subject to tax in the hands of a recipient who, if a holding company, may in turn declare and pay dividends out of such tax free income without having to deduct tax or otherwise submit to the operation of section 44, and those dividends will be likewise exempt from tax in the hands of the ultimate shareholders.[35] Clearly any measure which reduces the amount of tax free income at the outset will result in a lesser sum being available for distribution to shareholders under the favourable conditions mentioned above. The second proviso to section 13A(2) was such a measure, since it compelled a shipping enterprise to take capital allowances into account, regardless of the fact that no claim had been made for those allowances. Now, happily for the shipping companies, *section 5*(*b*), which takes effect from the year of assessment 1975,[36] abolishes this requirement, without at the same time prohibiting a claim for the allowances should a company in fact wish to claim them. However, the tax benefits that may have accrued to a shipowner from such a claim have been eliminated in the same breath by paragraphs (*c*) and (*d*) of *section 5*.[37] The net result is that a shipping company should in no circumstances make a claim for capital allowances on its seagoing Singapore-registered vessels. *Section 5(a)* effects the necessary changes in punctuation resulting from this amendment.

*Tax treatment of annuities*

The essence of an annuity is that it is a sum of money representing income payable under a legal obligation over a period of time. Its income nature distinguishes it from periodic repayments of a loan, or instalment payments of the purchase price of an asset.[38] In strict law, an annuity is considered pure income, and cannot be divided into capital and income components, even though it is obvious that, in the case of a purchased annuity, the payee receives with each payment part of the purchase price (i.e. a return of capital) together with a sum representing interest. Judicial analysis has been consistent on this point:[39]

> an annuity means where an income is purchased with a sum of money, and the capital has gone and has ceased to exist, the principal having been converted into an annuity.
>
> At any rate it seems to be quite accurate to say, as far as I know, that when you buy an annuity it means that you spend your capital in buying income; you have not any longer got capital, but you have got income.
>
> I feel bound to regard the purchase of an annuity... as the purchase of an income, and the whole of the income so purchased as a profit or gain, notwithstanding the way in which the payments are calculated. The sum paid for the annuity has ceased to have any existence, and the fact that, at the end of the annuity period, the recipient will have received an amount equal at least to what he paid I feel bound to treat as irrelevant.

Such at any rate is the law: although, as Rowlatt J. himself recognised in *Perrin* v. *Dickson,* "it is very easy to say that; the difficulty is when

35 Section 13A(6)(c), (*f*).
36 See *section 1(3).*
37 For a discussion, see *infra,* pp. 253, 254.
38 *Secretary of State for India* v. *Scoble* 4 T.C. 618; *I.R.C.* v. *Ramsay* 20 T.C. 79.
39 *per* Watson B. in *Foley* v. *Fletcher* (1858) 3 H. & N. 769 at 784; *per* Rowlatt J. in *Perrin* v. *Dickson* 14 T.C. 608 at 614; *per* Sir Wilfred Greene M.R. in *Sothern-Smith* v. *Clancy* 24 T.C. 1 at 7, 8.

one comes to apply it."[40]

This method of taxing annuities was one of the reasons why they were not regarded as a wise investment by wary taxpayers, and the sale of annuities accounted for a very small part of the insurance business in Singapore up to 1974. Then, in his Budget Statement of that year, the Minister announced that as from the year of assessment 1975 it was proposed to tax only the interest element of annuity instalments, with the aim of assisting the insurance industry as well as popularising a different and attractive form of insurance cover.[41] As a consequence, *section 3(b)* inserts a new section 10(6) to provide that, as from the year of assessment 1975,[42] the income derived from an annuity is deemed to be an amount equal to 3% of the total consideration payable or paid for the purchase of the annuity. In the case of an annuity for life, it is clear that an annuitant may eventually recover more than the purchase price paid plus interest. A safeguard for the fisc thus ensures that if an annuitant receives more than the purchase price paid plus the amounts deemed to be income under the amendment, the whole of the excess is to be deemed to be income.

*Double deduction for the promotion of exports*

In June, 1972, the Minister indicated to the Singapore Manufacturers' Association that he would be prepared to consider granting income tax concessions to locally owned firms which were not already enjoying export or other incentives for participating in approved trade fairs, exhibitions and trade missions.[43] No further mention was made of this subject in his 1973 Budget Statement, and it was left to an eloquent Member of Parliament to remind the Minister of his promise and plead the manufacturers' case during the debate on the Budget. This Member, who subsequently became the Senior Minister of State for National Development, proposed a double tax deduction as one method of encouraging a higher growth of exports.[44] Nearly two months later, the Minister announced that, with effect from 1st April, 1973, the Government would give additional tax relief for certain expenses incurred by local manufacturers "primarily and solely for the purpose of developing exports of Singapore manufactured goods."[45] This concession is now given legal status by *section 6,* which creates a new section 14B. The Minister retains full control over the implementation of this section, since it is he, or some person appointed by him for this purpose, who must approve of the trade fair, exhibition or trade mission before expenses incurred in connection with a manufacturer's participation therein can qualify for this special relief, which, linked with section 14, means that the same expense can be deducted twice. It should be noted that the expenses in question must be de-

[40] 14 T.C. 608 at 614. The difficulty is amply illustrated by the fact that two members of the Court of Appeal in *Sothern-Smith* v. *Clancy* expressed some disagreement with the way in which the principle was applied in *Perrin* v. *Dickson* itself: see 24 T.C. 1 at 7, 8, 11, 12.

[41] *Hansard,* Vol. 33, col. 73. The ultimate goal was "to develop Singapore as an important insurance centre... in line with ... [the Government's] efforts to develop Singapore as the 'brains' service centre of Southeast Asia."

[42] See *section 1(3).*

[43] As stated in *Hansard,* Vol. 32, col. 575.

[44] *Loc. cit.*

[45] *The Straits Times,* 1st May, 1973.

ductible in the first place under section 14(1) (in other words, they must be incurred "wholly and exclusively in the production of the income"); insofar as they relate to the travel, accommodation or subsistence of employees taking part in the trade fair, expenses for more than two such employees will be disallowed; and no relief under section 14B will be granted to an export enterprise which is already the beneficiary of fiscal incentives under the Economic Expansion Incentives (Relief from Income Tax) Act.

*Accelerated depreciation for anti-pollution equipment*

It was announced in 1972 that while the Government was beginning to intensify its enforcement of anti-pollution legislation, it was prepared to assist industries by allowing them accelerated depreciation over three years on their capital investment in approved anti-pollution devices.[46] In the same year, a new Ministry, the Ministry of the Environment, was created to tackle the problems of pollution and forestall tragic developments here such as had occurred with the notorious mercury poisoning of inhabitants of the Japanese town of Minamata. The message was clear: although Singapore welcomes more industries and the job opportunities they bring, she does not want the pollution which is at times a by-product of industrial progress. At the same time, while it may take no more than the stroke of a pen to issue strict pollution-control directives, prospective industries may shy away from commencing operations here because of the high, if not prohibitive, cost of efficient anti-pollution equipment, and existing industries, especially the smaller ones, may find the added expense an intolerable strain on their budgets. The relief provided under section 19 is often inadequate, in view of the extremely conservative rates of depreciation fixed and unchanged since 1948. Thus, although the Government has by law placed the onus on owners of industries to control pollution, it now has, by virtue of a revised section 19A(1) (inserted by *section 7*), allowed them to write off evenly over a period of but three years all capital expenditure incurred on or after 1st January, 1973 on the installation of equipment to prevent, control or reduce air or water pollution.

*Personal reliefs*

The remaining two reliefs, which may be aptly termed "personal reliefs" since they can be claimed only by individuals, were first announced by the Minister in his 1973 Budget Statement.[47]

*Section 8(a)* supplements the existing child relief by creating a new sub-paragraph (iv) to section 39(2)(*d*) to allow a person who maintains a child physically or mentally unable to support himself to claim the appropriate deduction for that child, even though the latter is over sixteen years of age. This entitlement to relief is of course subject to paragraph 3(*a*) of the Fifth Schedule, so that if the handicapped child is born on or after 1st August, 1973 and is the fourth or subsequent child, no relief at all can be claimed.

*Section 8(b),* dealing with the second relief, inserts a new paragraph (*f*) to section 39(2). The result is that a taxpayer who maintains his

[46] *Hansard,* Vol. 31, col. 537.
[47] *Ibid*., Vol. 32, cols. 476, 477.

or his spouse's parent, grandparent or great-grandparent living with him in the same household may in certain circumstances (e.g. if the dependant is not less than fifty-five years of age, or is physically or mentally handicapped) obtain a deduction of $300 per dependant for the year of assessment 1974, and $750 per dependant for the year of assessment 1975 and subsequent years of assessment, subject to a maximum of two dependants. Prior to 1973, the Government had resisted all attempts to give taxpayers this form of tax relief, on the grounds that in Asian societies, the support of aged parents was "an acknowledged responsibility of all decent citizens", "a basic ethical principle", and consequently it was "unworthy. . to introduce mercenary considerations such as relief for income tax" into the question.[48] *O tempora! O mores!* one might now muse. However, the relief provided by the new section 39(2)(*f*) is subject to two important restrictions: firstly, the dependant must be living with the taxpayer in the same household, and secondly, the dependant must be the taxpayer's or his spouse's parent, grandparent or great-grandparent. Much could be said in favour of the lifting of these requirements.

With regard to the first requirement, it is true that with a large percentage of the population occupying high-rise flats,[49] many of which are one or two-bedroom units, given the stresses of modern life it may be impracticable, if not undesirable from the standpoint of the physical and emotional well-being of the co-habitants, for a young couple with two children to have their elders reside with them. Moreover, social values do not remain constant, and, in the opinion of a local Methodist pastor:[50]

> Singapore of today is witnessing a change of mood in regard to old age. While in the past the elderly expected their children out of filial piety to take care of them, many today prefer to live indepently (sic) without charity.

On the other hand, the Government has taken pains to clarify its policy behind the grant of this relief:[51]

> The Asian concept of the extended family is of a family living together. It really does not help in establishing the kind of conditions that we want to have the taxpayer living in a Housing Board flat and his parent living perhaps in a Social Welfare Home for the Aged. This is certainly not the intention of giving the tax deduction.... I think it is very desirable that this extended family concept should be encouraged. The reason is that the parents are required to be taken care of not by some social welfare workers but by their immediate and affectionate relatives.

Recently, however, the Minister declared in his 1975 Budget Statement that the Government now wished to encourage older citizens to be productive by continuing in their employment or business, and would

[48] Quoting from the Minister in reply to a call on 15th October, 1969 by a Member of Parliament for amending legislation to permit tax relief for the maintenance of aged parents: *Hansard,* Vol. 29, col. 85.

[49] 47%, according to a recent estimate given by the Minister for Health: *The Straits Times,* 10th November, 1975.

[50] Reported in *The Straits Times,* 5th November, 1975. The pastor, Dr. Tony Chi, was advocating a special "retirement home" for those of pensionable age to live together enjoying companionship, privacy and personal freedom, and to grow old with dignity.

[51] Quoted from the Minister's replies during the 1973 Budget debate on 8th March, 1973: *Hansard,* Vol. 32, col. 632.

offer a tax incentive to entice them out of retirement.[52] The reason was that there is currently a shortage of trained and experienced manpower.[53] This move does not appear to be totally consistent with the Government's avowed intention of encouraging the traditional ideal of an extended family in which "the grandparents help in bringing up the children whilst father and mother are at work."[54] Still, the exigencies of a modern economy demand a modern approach.

As regards the second restriction, it may be pointed out that a child who has been brought up by an aunt, uncle or other relative (or even a non-relative) may as an adult decide to support that foster-parent in the latter's old age as a mark of gratitude. No tax relief is granted for a display of such devotion, unless the word "parent" in section 39(2) (*f*) is given a wide meaning to include a person who was at any time *in loco parentis* towards the individual concerned. Such a construction, however, appears untenable: applying the maxim, *noscitur a sociis,* to the word "parent", we perhaps cannot but conclude that only lineal ancestors of the taxpayer or his spouse are envisaged. It may be pointed out that in the reverse situation the child in respect of whom relief is granted under section 39(2) (*d*) may be "a legitimate child, stepchild, or child adopted in accordance with any written law relating to the adoption of children."[55] Should not an adopted child in turn be allowed some relief for the maintenance of his foster-parents? A probable explanation of the two restrictions is that those reliefs which are justified principally or solely on grounds of equity, and which do not directly or indirectly provide a stimulus to the taxpayer to work towards the greater economic progress of his country cannot be expected to be too liberal.

**Restriction of existing reliefs**

There are three areas in which existing relief has been somewhat curtailed. The first concerns the exemption from tax of the income of short-term visiting employees, dealt with by *section 4(b),* which substitutes a new section 13(4) with retrospective effect from the year of assessment 1974.[56] The second relates to reliefs granted to shipping enterprises under section 13A, which is tightened up by the substitution of a new subsection (3) in place of the old subsection (3), and the addition of subsections (12) and (13) by *section 5(c)* and *(d)* with effect from the year of assessment 1975.[57] The third deals with relief in respect of the maintenance and education of children overseas, *section 18* completely revising paragraph 4 of the Fifth Schedule with effect from the year of assessment 1975.[57]

[52] *Ibid*., Vol. 34, cols. 192, 193. This proposal is now contained in *clause 8* of the Income Tax (Amendment No. 2) Bill: see *infra,* pp. 267, 268.
[53] *Ibid.,* Vol. 34, col. 447.
[54] Quoted from the President's Speech on the opening of the Second Session of the Third Parliament on 21st February, 1975: *ibid*., Vol. 34, col. 6. The context was the President's promise that, in view of the fact that young families often left out their aged parents when they moved into flats, his Government would take measures to make it more attractive for young couples to have their parents live with them.
[55] Paragraph 10 of the Fifth Schedule.
[56] See *section 1(2).*
[57] See *section 1(3).*

*Exempt income of short-term visiting employees*

By section 12(4), if an employment is exercised in Singapore, the gains or profits therefrom "shall be deemed to be derived from Singapore", and will therefore be taxable under section 10(1) (*b*). However, if the period of employment does not exceed sixty days in the basis period, and the employee is not resident in Singapore in the year of assessment, then the income will be exempt from tax under section 13(4). The unamended section 13(4) excepted from the benefit of this tax exemption the emoluments of a company director and the gains or profits of "public entertainers" (as defined in section 40B) whose visits were not supported from the public funds of the government of another country. Although *section 4(b)* rewrites section 13(4), the only significant change lies in the requirement that to qualify for this relief the visiting entertainers must be "substantially" supported by the foreign government. In the past, although support was sometimes purely nominal, this sufficed to take the gains or profits out of the non-exempt category. Now the support must be "substantial", although no legal guidance has been given to determine the scope of this word.[58]

At this juncture, it might be appropriate to point out an anomaly in this section (which anomaly may also be seen in, *inter alia,* section 39) resulting from the 1973 amendment of the definition of "resident in Singapore" contained in section 2. This amendment was designed to relate any reference to the residence of a taxpayer in Singapore to his residence there during the basis period for a year of assessment, i.e. the preceding year. The relevant part of the definition reads thus:

> "resident in Singapore"—
>
> a) in relation to an individual, means a person who, in the year preceding the year of assessment, resides in Singapore .

Under section 35(1), a taxpayer's "statutory income" (whence is derived his "assessable income", and finally his "chargeable income", on which tax is levied in accordance with rates authorised by sections 42 and 43) is to be "the full amount of his income for the year preceding the year of assessment from each source of income." However, special provisions governed the computation of statutory income when a source of income commenced or ceased, until these provisions were abolished in 1969. Prior to 1973, references in the Income Tax Act to a taxpayer's residence without a further stipulation as to the period of time in relation to which that residence was to be determined,[59] i.e. whether in relation to the basis period or the year of assessment, could not unreasonably be taken to relate to his residence during the year of assessment. The rationale is that tax is imposed on a person's chargeable income which is derived from his statutory income, so that, strictly speaking, what the Comptroller is taxing is the income of a given year of assessment, and not the income of the year preceding that year of assessment, although admittedly the former is measured by the latter. Thus, in the year of assessment 1975, the Comptroller taxes a person's 1975 income, not his 1974 income,

[58] Cf. the guidance on the meaning of "substantially" given by sections 23(3) and 37(7), where a proportion of 50% is deemed to be "substantial".

[59] For example, sections 12(1), (2), (3), (6); 13(1)(*t*), (v); 42; 43(*b*); 44(1); 48; 53.

although the latter forms the basis for the computation of the former. Rowlatt J. put it succinctly when he observed in *Fry* v. *Burma Corporation*:[60] "You do not tax the years by which you measure: you tax the year in which you tax and you measure by the year to which you refer." This being the case, statements about a taxpayer's status (if this status affects his liability to tax) should really relate to his status in a given year of assessment, and not his status in the basis period. Some provisions in fact specified this.[61] However, because some requirements were expressly made to relate to the basis period, an application of the above logic left one somewhat dissatisfied. For example, before an individual could claim wife or child relief under section 39(2) for a particular year of assessment, he had to be resident in Singapore in that year, and it was immaterial that he was not resident there during the year when the income sought to be taxed was actually earned or acquired. And yet — somewhat anomalously — the wife or child in question had to be maintained by him in the year preceding the year of assessment. To take another example, income from a non-Singapore source that is received in Singapore is normally taxable.[62] However, by virtue of section 13(3), if such income were received by a non-resident, it would escape taxation. The precise wording of the subsection excludes from the terms of the exemption a person who has actually resided in Singapore "at one or more times for a period equal in the whole to six months in the year of assessment." Thus, if a person received income in Singapore from a non-Singapore source in 1970, in which year he is a non-resident for tax purposes, then if he became a resident in 1971, that income would no longer be exempt from tax, and would be assessable in the year of assessment 1971: which result may not have been what was originally intended. Again, an employee who earns a salary of $20,000 in 1971, in which year he is resident in Singapore, should be taxed on that amount in the year of assessment 1972 as a non-resident, if he gives up his employment in 1972 and leaves Singapore: he is not entitled to the personal reliefs given by section 39, but may derive some comfort from section 40 or section 40C.

With the abolition of the special commencement and cessation provisions in 1969 and the complete adoption of the preceding year basis in respect of all sources of income commencing after 1st January, 1969, it was thought undesirable to have one's statutory income computed by reference to the year preceding the year of assessment, and other criteria (such as residence) determined in relation to the year of assessment. Consequently, the 1973 amendment placed the determination of a taxpayer's residence solidly on a preceding year basis.[63] However, sections 13(3), 39, 40, 40B and 40C were left unamended, and it might be wondered whether the term "resident in Singapore in the year of assessment" (or similar words) appearing in those sections now means precisely what it says, or whether it must be read subject

[60] 15 T.C. 113 at 120.

[61] For example, sections 13(3) (the latter part); 39; 40; 40B; 40C.

[62] See the opening words of section 10(1). Roughly summarised, the basis of Singapore's tax jurisdiction depends on the place of accrual, derivation or receipt of income: if that place is Singapore, the income in question is taxable.

[63] The Minister's explanation of the reason for this amendment, given during the second reading of the Income Tax (Amendment) Bill, 1973, was that it was essential "because of the changeover to the preceding year basis of assessing income tax": *Hansard,* Vol. 32, col. 1246.

to the overriding qualification contained in section 2, so that "resident in Singapore in the year of assessment" must be taken to mean "resident in Singapore in the year preceding the year of assessment". The same problem arises with the new section 13(4). If an employee who is not caught by the proviso works for one month in Singapore in 1974, during which year he is not resident in Singapore, would his salary be taxable in the year of assessment 1975 if he does in fact become resident in Singapore in 1975? Would not a positive answer nullify what appears to be the policy behind the 1973 amendment? And yet, section 13(4) having been re-drafted, the ambiguity remains. It is thought that in order to resolve any ambiguity the definition of "resident in Singapore" included in section 2 should have had added to it the words "unless otherwise provided" to qualify the phrase "in the year preceding the year of assessment" appearing in the second and third lines of paragraph (a). Then, unless the present wording of section 13(4) is deliberate and not due to a draftsman's oversight, the words "in that year of assessment" immediately following "resident in Singapore" should be omitted.

*Capital allowances and loss relief granted in respect of Singapore-registered ships*

By section 23, if there are insufficient profits in any year to absorb a taxpayer's capital allowances, then, provided he continues to carry on the relevant trade, profession or business, he may carry forward the unabsorbed allowances indefinitely and set them off against the profits of subsequent years. Similarly, losses incurred in any trade, business, profession or vocation may be carried forward indefinitely under section 37(2)(*a*). Under the second proviso to the former section 13A(2), capital allowances due to a shipping enterprise had to be taken into account in computing the profits of the shipping enterprise, and if there was insufficient tax exempt income to absorb those allowances, the company could set off the excess against its taxable profits. By virtue of section 13A(3), losses incurred on the operation of Singapore ships were treated like any other loss under section 37(2)(*a*). Thus, while profits from the operation of Singapore ships alone were exempt from tax, capital allowances and losses in respect of their operation could be used to reduce the taxable income of the enterprise: a magnanimous gesture on the part of the Inland Revenue. However, with effect from the year of assessment 1975, capital allowances claimed and losses incurred in respect of the operation of Singapore-registered ships are to be deductible only from income exempt under the provisions of section 13A, and shall not be available as a deduction against any other income.[64]

A new section 13A(12), inserted by *section 5(d)* to take effect from the year of assessment 1975,[65] further restricts relief for shipping enterprises. It has already been noted that a shipping enterprise is no longer compelled to take capital allowances into account in determining its tax exempt profits.[66] However, should the vessel leave the Singapore Registry and events subsequently occur giving rise to a balancing allowance or charge,[67] the amount of that allowance or

[64] Section 13A(3), as rewritten by *section 5(c).*
[65] See *section 1(3).*
[66] See *supra,* p. 246.
[67] See sections 17(1) and 20(1).

charge will vary according to the amount of capital allowances previously claimed: the greater the allowances claimed, the less the residue of expenditure[68] or the written down value of the ship, and consequently, the less the balancing allowance available as a deduction against profits, or, as the case may be, the greater the balancing charge deemed to be income under section 10(4). Thus, while the revised section 13A(2) gives the shipping company an option whether or not to claim its capital allowances, once any of its ships "ceases to be a Singapore ship" section 13A(12) makes it mandatory to take into account all unclaimed capital allowances. The idea is that the tax benefits conferred on a Singapore-registered ship should be conditional on the ship preserving its Singapore registration. Provision is also made by a new subsection (13) that subsections (3) and (12) shall override anything to the contrary contained in the Act (e.g. sections 23 and 37(2)(a) ).

*Child relief*

Under the old paragraph 4 of the Fifth Schedule, a taxpayer may be granted up to double the appropriate amount of child relief set out in paragraphs 1 and 2 for meeting expenses incurred in relation to the maintenance or education of any child or children outside Singapore. *Section 18* substitutes a new paragraph 4, which reduces the scope of the relief in two ways:

1) formerly, the child did not have to be abroad for the purpose of his education, it being sufficient that he was abroad and that the taxpayer maintained him. It is now an essential feature of this relief that the child be undergoing some form of education; and

2) there was no previous restriction of the type or level of education the child had to undergo. The new paragraph 4 makes it clear that the child must be receiving full-time instruction in a university or equivalent institution after being unable to gain admission to a similar institution in Singapore, or pursuing a course of study not available on a full-time basis in Singapore.

The policy appears to be to encourage parents to have their children educated at all levels as far as possible in the Republic.[69]

Insofar as relief under this paragraph is concerned, it is submitted that if a child qualifies for relief under paragraph 4, the ceiling placed on his income by paragraph 5 will be either a sum equal to the total amount expended by the parent on his maintenance and education, or double the appropriate deduction provided by paragraphs 1 and 2, whichever is the lower. The decision of the Singapore Board of Review to the contrary in *Re A Taxpayer*[70] is no longer valid, since the reasoning there was based on the fact that what is now contained

[68] As defined in section 18(5) *(b)*.

[69] See the Minister's remarks during the second reading of the Bill, to the effect that the Government should not continue to subsidize the "unnecessary expenditure" incurred by parents "[who] want their children to be 'expatriates' at an early age by sending them to expensive schools abroad": *Hansard,* Vol. 34, col. 1102

[70] [1969] 1 M.L.J. xvii.

in paragraph 5 of the Fifth Schedule was at that time included in the relevant subsection of the Act as one of a number of provisos, which the Board held had to be read subject to the opening words of the subsection, and not subject to each other. There is now an entirely different arrangement of the conditions setting out the relief,[71] and it is felt that this revised arrangement lends itself more readily to the interpretation canvassed above. *Section 9* makes a consequential amendment to section 40(1).

**Taxation of interest and gains from NCDs**

A Negotiable Certificate of Deposit (NCD) is a transferable instrument containing a promise by the issuing bank to pay the owner or buyer the principal amount stated on the instrument plus interest on maturity. Unlike the owner of a fixed deposit, the NCD owner can sell it before maturity, thus giving impetus to the development of an active secondary market dealing with the buying and selling of NCDs.

NCDs made their first appearance in Singapore in 1970 but were issued only in Asian dollars. In 1973, the Minister announced in his Budget Statement that as from 1st April, 1973, the Monetary Authority of Singapore (MAS) would allow financial institutions to issue NCDs in local currency on certain conditions, viz. that issuing banks and discount houses keep records of purchasers and sellers, that taxable income be taken as the difference between sale price and purchase price of NCDs, that NCDs be deposited with an authorised depository and that their issue be subject to Exchange Control Regulations.[72] In fact, because of turmoil and uncertainty in the financial world, the issue of NCDs in Singapore dollars was delayed until May, 1975. Consequently, it is only now that provision for the taxation of interest and gains from NCDs has been deemed necessary.

Before we discuss the taxation provisions, a brief outline of the principal features of a Singapore dollar NCD may be useful. Only banks specifically approved by the MAS can issue Singapore dollar NCDs, which come in multiples of $50,000, subject to a minimum of $100,000 and a maximum of $1,000,000. Each issue has a minimum maturity period of three months, and a maximum of three years. Interest is paid with principal on short NCDs (i.e. NCDs issued for less than a year) and annually on longer ones (i.e. those issued for more than a year). As may have been gathered, NCDs are easily negotiable, and can be held in a liquid or near-liquid state while earning interest. The investor can thus content himself with a guaranteed yield by holding the NCD until maturity, or take a market risk in order to maximise his yield by buying and selling at the appropriate time. The hope has been expressed that NCDs will play an important role in the development of the money market in Singapore.[73]

[71] Effected by the Income Tax (Amendment) Act, 1973.
[72] *Hansard,* Vol. 32, cols. 478, 479.
[73] *Loc. cit.* A significant revenue (though not income tax) concession given in 1972 to promote the growth of a short-term money market was the abolition of stamp duty in connection with the issue and negotiation of, *inter alia,* NCDs: *ibid.*, Vol. 31, cols. 534, 535. It was estimated that in June, 1975 (one month after the issue of NCDs in local currency was launched) the volume of Singapore dollar NCDs in circulation was $200 million, and activity in this market was expected to pick up by year end: "Slowdown in Asian dollar mart growth", *The Straits Times,* 14th June, 1975.

A new section 10(7)[74] is introduced by *section 3(b)* to deal with the income of a person who "derives interest from a negotiable Certificate of Deposit or derives gains or profits from the sale thereof." The tax treatment varies depending on the status of the person sought to be taxed: if it is a financial institution, the interest and gains are taxable under section 10(1) (*a*), and in any other case, they are taxable under section 10(1)(*d*).

*Financial institutions*

In the case of a bank or discount house, both interest and gains from the sale of NCDs are deemed to be income from a trade or business, and are taxable under section 10(1) (*a*).[75] As a consequence, any losses incurred by the financial institution on transactions involving NCDs qualify for relief under section 37(2)(*a*).

*Any other persons*

In any other case, interest as well as profits from the sale of NCDs are deemed to be income from interest, and taxable under section 10(1)(*d*).[76] The method of computation of the amount of taxable interest differs where a person is the original holder of the NCD, and where he is a subsequent holder. Specific provision is made to cover only the latter case by sub-paragraphs (i) and (ii) of paragraph (*b*), and paragraph (c) of section 10(7).

As far as an original holder is concerned, if he keeps the NCD until maturity, the difference between what he receives and what he invested is interest in the ordinary sense of the world, and taxable under section 10(1) (*d*), quite apart from section 10(7) (*b*). If he sells the NCD before maturity, then any interest which he previously received plus the gain on the sale are taxable as deemed interest by virtue of section 10(7)(*b*). However, it may be that he makes a loss on the sale: this being possible if for some reason he requires his funds at a time when interest rates in the market for NCDs maturing at the end of the unexpired portion of his NCD have risen higher than the fixed interest rate on his NCD. It is submitted that in this event the amount of his taxable income will vary depending on whether the sale takes place in the same year in which he receives the payment of interest, or in a subsequent year. In the former case, the loss on the sale is deductible from the interest received as an outgoing or expense "wholly and exclusively incurred during [the same period] in the production of the income" from interest.[77] In the latter case, there can be no deduction under section 14(1), since the loss is incurred in a different basis period from that in which the interest was received. Moreover, an "interest loss" under section 10(1) (*d*) cannot be offset against a taxpayer's statutory income under the terms of section 37(2)(*a*), nor can it be carried forward to subsequent years of assessment. It is thus lost forever, so to speak. It would be different if the loss were a "trading loss", but in the case of a non-financial institution, section 10(7) (*b*) specifically deems all gains or profits from the

[74] To take effect from the year of assessment 1975: *section 1(3).*
[75] Paragraph (*a*) of section 10(7).
[76] Paragraph (*b*) of section 10(7).
[77] Section 14(1).

sale of an NCD to be interest income assessable only under section 10(1)(*d*).

On turning to the tax treatment of NCDs in the hands of a subsequent holder (i.e. a person other than the owner to whom the NCD was originally issued), we find that three situations are expressly provided for:

1) where the purchase price exceeds the issued price of the NCD, and interest is received;
2) where, after the receipt of interest, the NCD is sold; and
3) where the NCD is purchased at a price less than its issued price, and is held until maturity.[78]

In the first situation, the amount of taxable interest is such interest as is received exclusive of the amount by which the purchase price exceeds the issued price, except where that amount has been excluded in the computation of any previous interest derived by the subsequent holder in respect of the same NCD. Thus, to give an example, let us suppose that in January, 1976 X purchases a $100,000 NCD issued at 8% for 3 years on an offer of 7¾% with 2 years 300 days to run. and pays $101,950: the taxable income derived in 1976 from the interest of $8,000 received that year will be $6,050 ($8,000—$1,950). In the following year, since the amount of $1,950 has already been excluded, the full amount of interest received will be taxable.

The second situation covers the calculation of gains or profits arising from the sale of an NCD after the subsequent holder has received interest therefrom. In such an event, the profits will be "the amount by which the sale price exceeds the issued price or the purchase price whichever is the lower." This formula is equivocal and may mean that:

1) the profits are either the amount by which the sale price exceeds the issued price, or the amount by which the former exceeds the purchase price, whichever is the lower; or
2) the profits are the amount by which the sale price exceeds the lower of the issued price or the purchase price.

The first interpretation is obviously more beneficial to the taxpayer, but it is submitted that on balance the second is the correct interpretation: there is no punctuation mark between "price" and "whichever", and, there being thus no break in the flow of the sentence, the phrase "whichever is the lower" should be linked to and qualify the words immediately preceding it, i.e. "the issued price or the purchase price". To continue with our example above, if X sells the NCD in January, 1977 for $105,000, the gains or profits from the sale will be $5,000 (i.e. the sale price, $105,000, minus either the issued price, $100,000, or the purchase price, $101,950, whichever is the lower). If, contrary to our submission, the first interpretation is valid, then the gains or profits will be $3,050. The subsequent holder will thus

[78] Section 10(7): see respectively sub-paragraphs (i) and (ii) of paragraph (*b*), and paragraph (*c*).

be taxed on a total sum of $9,100,[79] or preferably $11,050,[80] as interest and gains derived from the NCD. It will observed that if we simply add the actual interest received by X ($8,000), and the actual profit made on the purchase and sale of the NCD ($3,050), X's total income will be $11,050: which is the identical figure reached on our view of the construction of sub-paragraph (ii). However, the tax consequences are different in two respects. Firstly, in a system of progressive rates of taxation, it will be readily appreciated that the assessment of an income of $6,050 in one year and an income of $5,000 in another year will yield a total tax which will most probably not be the same if the sum of $8,000 were assessed in one year, and $3,050 in another. Secondly, the method laid down by paragraph (*b*) (i) and (ii) provides some compensation for a taxpayer whose loss on a sale of the NCD may not be deductible under section 14(1) —if the loss occurs in a different basis period from that in which the income was received — and will not be eligible for relief under section 37(2) (*a*).[81] Sub-paragraphs (i) and (ii) are thus a recognition of the fact that although a person who is not a financial institution cannot ever by virtue of the main part of paragraph (*b*) be held to be trading in NCDs so as to be assessable to tax on the profits of his transactions under section 10(1)(*a*), yet he should be allowed some approximative relief for what is or might be essentially a trading activity. To illustrate this point, if we modify slightly the facts of our example, so that X sells the NCD in January, 1977 for $100,500 (instead of $105,000), it is clear that, having bought it for $101,950, he makes a loss of $1,450 on the sale, although overall his actual income is $6,550.[82] Apart from sub-paragraphs (i) and (ii), X would be taxed on $8,000 in the year of assessment 1977, and would get no relief for his loss of $1,450 either in that year or in any other year of assessment.[81] However, because of sub-paragraphs (i) and (ii), he will be taxed on $6,050 in the year of assessment 1977, and on $500 in the year of assessment 1978.

Paragraph (c) deals with the third situation, in which a subsequent holder purchases an NCD for less than its issued price and holds it until maturity. He will obviously have made a profit equal to the difference between the issued price and the purchase price, in addition to the interest he receives prior to or on maturity. The latter is plainly taxable as income from interest, but the former could not normally be called "interest", nor could it be described as "gains or profits derived from the sale of a negotiable Certificate of Deposit". Since section 10(7) brings only those two items within the charge to tax, that profit would have escaped taxation, had not paragraph (c) plugged the loophole by providing that in such a case the profit "shall be deemed to be interest derived by [the holder]." Although the paragraph does not go on to say at what point in time the profit shall be deemed to be interest (i.e. whether at the time of purchase or on maturity, it being possible for the purchase and maturity to

[79] Interest of $6,050 (as determined under sub-paragraph (i) ) + profit on sale of $3,050 (assuming the first construction suggested of sub-paragraph (ii) is correct).

[80] Interest of $6,050 + profit on sale of $5,000 (assuming the second construction of sub-paragraph (ii) is correct).

[81] For a discussion, see *supra,* p. 256.

[82] That is, interest of $8,000, reduced by a loss of $1,450.

take place in different basis periods), it is submitted that the relevant time is the date of maturity of the NCD.

From the point of view of the general arrangement of section 10(7), one criticism is that the subsection is rather clumsily drafted. It is felt that paragraph (*c*) should logically have been paragraph (*b*)(iii), since it simply continues the trend of thought contained in sub-paragraphs (i) and (ii) of paragraph (*b*), as revealed by our analysis above: paragraphs (a) and (*b*) set out two different methods of taxing interest and gains from NCDs, and paragraph (c) does not add a third method, being in fact expressed to take effect "for the purposes of paragraph (*b*) of this subsection". Moreover, paragraphs (*a*) and (*b*) are connected by the conjunction "and", which would normally lead one to expect the immediately following paragraph to be a concluding one.

A final remark should be made about the Government's announced intention to waive compliance with section 45 in the event that interest on NCDs is paid to a non-resident. Under section 45, a person who is liable to pay to another person not known to him to be resident in Singapore an amount of interest chargeable to tax must deduct from every such payment tax at the rate of 40% and account to the Comptroller for the tax deducted. It was felt that if this section were enforced in relation to NCDs, their marketability would be adversely affected. The Government thus decided in 1973 to forego its right to require the deduction of withholding tax under section 45 when interest on NCDs was paid to non-residents.[83]

**Provisions to strengthen the law against income tax offenders**

It was experience in the day to day administration of the Income Tax Act that revealed the desirability of certain modifications in the law dealing with offenders. The aim of these modifications is to minimise the risk of tax evasion by spreading the net of accountability for statements contained in tax returns (*section 10*), and by tightening up the penalty system so that "without excessive harshness [it] would yet be punitive enought to deter would-be offenders"[84] (*sections 11, 13, 14, 15, 16*).

*Section 10* amends section 63 by giving the Comptroller power to require a married women to file a return of her income, although that income may properly be chargeable only in her husband's name in accordance with section 51 (1),[85] or to verify and sign her husband's return insofar as it relates to her income,[86] and by bringing her within the ambit of sub-section (2) of section 63 so that she too is obliged to give notice to the Comptroller within the prescribed time of her husband's chargeability to tax in respect of her own income.[87] Failure to comply with these requirements without reasonable excuse renders

[83] 1973 Budget Statement: *Hansard,* Vol. 32, col. 478. *Clause 10* of the Income Tax (Amendment No. 2) Bill proposes a new section 45, which represents a considerable tightening up of the existing section: see *infra,* p. 268.
[84] The Minister's comments during the second reading of the Bill: *Hansard,* Vol. 34, col. 1100.
[85] *Paragraph (a)* of *section 10.*
[86] *Paragraph (b).*
[87] *Paragraph (c).*

the wife liable to prosecution for an offence under section 63(3) punishable under section 94. Previously it was not possible to prosecute the wife if her husband's return did not state the correct amount of her income since she was not the one assessable to tax on her unearned income,[88] and therefore did not come within the operation of section 63. At the same time, the Comptroller was reluctant to prosecute the husband if he really knew nothing about his wife's undeclared income.[89] The amended section 63 renders the wife accountable for statements about her own income.

*Section 11* inserts a new section 65C, which makes it an offence for a person to fail or neglect without reasonable excuse to comply with any notice issued by the Comptroller under section 64, 65, 65A or 65B of the Act. Previously, if a delinquent taxpayer refused to acknowledge a notice issued under any of the above sections, it was arguable that no offence was committed since the request contained in the notice was not made under section 63, and the refusal was not caught by section 94(1) as he could not be said to have contravened or failed to comply with "any of the provisions of the Act": all he did was merely to fail to comply with the Comptroller's request, and the relevant provisions did not require him so to comply. Section 65C now corrects this defect. Moreover, in order to discourage repeated violations of section 63 or 65C, *section 13* introduces a new section 94(2A), which further penalises a person convicted of an offence under section 63 or 65C if such conviction is a second or subsequent conviction for the same year of assessment: in addition to the penalty laid down under section 94(2), he is obliged to pay $50 for every day during which the offence is continued after such conviction. It is to be noted that for the subsection to operate, the second or subsequent conviction need not occur in the same year as the first or previous conviction, so long as it is *for* the same year of assessment. In other words, it suffices that the relevant conviction relates to incidents which have taken place during the same year of assessment as those giving rise to the first or prior conviction. No maximum is placed on this additional penalty. One may compare this situation with that contemplated under section 88, where a ceiling of 17% of the amount of tax outstanding is imposed on the penalties for late payment or non-payment of tax laid down by the section. The difference is that, in the latter case, the amount of tax due is already known, whereas, in the case of proceedings commenced under section 63 or 65C, the Comptroller has no idea of the taxpayer's income and consequently of the tax due on that income, so that if a maximum

[88] Nor is she normally assessable on her earned income, although she may elect, as from the year of assessment 1966, to be separately assessed on that income alone by virtue of section 51(4), in which case she would be bound to comply with section 63 as unamended. The term "earned income" used in this connection has a special meaning, set out in section 51(5).

[89] Although the Minister stated that "it was not possible to prosecute the husband since he may genuinely be unaware of the wife's undeclared income" (*Hansard,* Vol. 34, col. 1101), it is submitted that this statement was not an accurate reflection of the law. Surely the husband who omitted to state his wife's income in his return was guilty of an offence under section 95(1), which by its terms creates an offence of absolute liability. However, by virtue of section 99, a prosecution for an offence under section 95 requires the sanction of either the Comptroller himself (a Deputy or Assistant Comptroller will not do: section 2) or the Attorney-General, and the true explanation may have been that it was simply thought too harsh to prosecute an "innocent" husband.

were fixed, a dishonest taxpayer may prefer to pay that maximum, and gamble on the fact that an estimated assessment raised under section 72(3) may fall so far short of the mark that even after he pays all penalties plus the tax due on the estimated assessment, he is not the real loser.

*Sections 14* and *15* amend the minimum term of imprisonment that may be ordered under sections 95(2) and 96(1). In addition to fixed penalties on conviction, the old sections 95(2) and 96(1) provided for fines and/or "imprisonment for a term of not less than six months". A minimum of six months' imprisonment often seemed draconian for certain offences under these sections, and many offenders were frequently let off with only a fine.[90] The amendments delete the requirement of a minimum term, except in the case of an individual convicted for three or more offences under section 96(1).

Both Magistrate's Courts and District Courts have jurisdiction to try all offences under the Income Tax Act,[91] but their sentencing powers are limited, in the case of a District Court, to a maximum fine of $5,000 and/or a term of imprisonment not exceeding three years, and, in the case of a Magistrate's Court, to a maximum fine of $2,000 and/or a term of imprisonment not exceeding one year.[92] However, the Criminal Procedure Code allows any law to extend their sentencing powers, in which event, "notwithstanding anything herein contained. the District Court or Magistrate's Court may award the full punishment authorized by such law."[93] *Section 16* now inserts a new section 101 to permit these courts, which in practice deal with a large number of income tax cases, to impose the full penalty or punishment provided for any offence under the Act.

**Miscellaneous amendments**

There are three miscellaneous amendments, effected by *sections 2, 12* and *17.* We shall deal with *sections 2* and *17* before making some observations on the section amended by *section 12.*

*Section 2* creates a new section 6(10), which allows the Comptroller to lay a complaint of professional misconduct with the appropriate disciplinary body against any person in his professional dealings with the Comptroller, and to furnish any relevant documents or information for this purpose, notwithstanding the obligation of secrecy imposed by section 6(1). During the debate on the Bill, some concern was expressed in Parliament that because of this provision, the confidential tax affairs of an innocent client of a professional man would be revealed to and discussed by other professional men sitting on the disciplinary body hearing the charge of professional misconduct, when these same men might be representing other clients with conflicting

90 See the Minister's remarks: *Hansard,* Vol. 34, col. 1101.

91 Offences punishable under sections 94(2), 95(1), 95(2), 96(1) and 97 may involve the imposition of only a fine, or of both a fine and a term of imprisonment not exceeding three years. They may thus be tried by either a District Court or a Magistrate's Court: see respectively sections 7 and 8 of the Criminal Procedure Code, Cap. 113, Singapore Statutes, Rev. Ed. 1970.

92 See section 11(3) and (5) of the Criminal Procedure Code.

93 Section 11(7).

vested interests in the matter.[94] The Minister's reply was that the taxpayer's name could be suppressed, and the details of his tax affairs concealed, except to the extent that they were essential to an investigation of the particular complaint of misconduct.[95] This safeguard is, however, not built into the language of the subsection, which gives the Comptroller a wide discretion to furnish any documents or information provided they be relevant to the complaint.

*Section 17* adds a new subsection (3) to section 106, which now gives the Minister power to amend the First, Third and Fourth Schedules to the principal Act by publishing an order in the *Gazette*. The First Schedule contains a list of institutions, authorities, persons or funds exempted from income tax under section 13(1)(*e*); the Third Schedule concerns the taxation of persons, income or property affected by any written law relating to trading with the enemy, as provided for by section 62; and the Fourth Schedule lists bonds and stock subject to the operation of section 46A. However, it is still only Parliament that can amend the Second and Fifth Schedules, which deal with the rates of income tax and child relief respectively. It was thought that this should not be changed as "these two Schedules.... affect a great number of people."[96]

Finally, *section 12* corrects what was obviously a spelling or printing error in section 93 — the section which entitles a person who has paid tax "by deduction or otherwise" (formerly "reduction") in excess of the amount payable under the Act to have the excess refunded. In the case of an excess of tax credit given by section 46 on a payment of dividends over tax due, it is the practice of the Comptroller to refund that excess on the authority of section 93(1): section 46 merely provides for the tax deducted on a payment of dividends under section 44[97] to be set off against the total tax due by the recipient on his chargeable income. As a matter of principle, however, if the recipient's entire income is tax exempt,[98] or his top marginal rate of tax is less than 40%, can it be asserted that he has a legal right under section 93(1) to require to be paid to him either all the tax credit or the excess remaining after a set-off against tax due from him? If the reasoning of the Australian High Court in *Hughes* v. *Federal Commissioner of Taxation*[99] is correct, the answer must be in the negative, since the recipient would not be a "person [who] for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount payable under the provisions of [the] Act". Nor would he be able to invoke section 92, which deals with a remission of tax — something quite different from a repayment of tax.

In *Hughes* v. *Federal Commissioner of Taxation*,[99] the taxpayer, a resident of Australia, received dividends from Malayan companies which, when making payment, would deduct tax at the rate of 30%

94 *Hansard,* Vol. 34, col. 1103.
95 *Ibid*., Vol. 34, col. 1107.
96 The Minister's remarks: *ibid*., Vol. 34, col. 1103.
97 Currently 40%.
98 E.g. by virtue of section 13(1)(*e*), (*f*), (*g*), (*m*).
99 (1958) 7 A.I.T.R. 182. The writer is grateful to Dr. Chew Peng Hui for having first raised the issue with him.

and furnish him with a certificate verifying the amount deducted and the net amount paid in accordance with section 40 of the Income Tax Ordinance, 1947 (incorporating amendments up to 1953).[1] The tax deducted was set off against Malayan tax charged on his income, and as he was allowed certain personal reliefs under the Ordinance, the result was that the former sufficed to cover (and in fact exceeded) the latter. He was assessed to Australian tax on his dividend income, and the Commissioner included the net dividends received as part of his assessable income. The taxpayer objected, claiming that the amount to be included was the gross amount, so that he was entitled to a credit under section 45 of the Australian Income Tax and Social Services Contribution Assessment Act 1936-'54 in respect of Malayan tax deducted on the gross dividends. Now if the tax deducted by the companies could be treated as tax paid on the shareholder's behalf, or as tax paid to satisfy a liability imposed on him as a Malayan taxpayer, so that in effect it could be treated as "paid" by him, then the "dividend paid" by the companies for the purposes of section 45 of the Australian Act would be the gross dividend. However, if the character of the tax deducted by the companies was that of tax paid or payable by the company on its own account, and not tax paid or payable by the shareholder, then the "dividend paid" would be the net dividend. The determination of this issue involved an examination of the basis and scheme of dividend taxation under the Malayan Income Tax Ordinance. The court found that:

> … under the Malayan Ordinance the company pays its tax on its own behalf and not in a representative capacity.[2]
>
> No doubt it is part of the plan of the Ordinance to collect the tax at the source and at the same time to avoid double taxation of the same profit or income. To effect that purpose it is enough for the Ordinance to confer on the shareholder a right to set off the amount paid by the company against his own tax It is true that the incidence or economic burden of the tax is intended by the Ordinance to fall upon him, as is shown by the operation of the provisions relating to relief. But it remains true that no payment is made by the company to the revenue which could be considered a distribution to him or a crediting to him of the thirty per cent of the dividends.[3]
>
> The "tax" which the section says may be deducted is a proportion of the company's tax, not the shareholder's; and the Ordinance may be searched in vain for any provision giving to a deduction the effect of a payment *pro tanto* of any tax payable by the shareholder.[4]

The same conclusion was reached in relation to the system of dividend taxation under the Ceylonese Income Tax Ordinance in *Federal Commissioner of Taxation* v. *Brohier*,[5] and *Brohier* v. *Federal Commissioner of Taxation*.[6]

If, then, the tax deducted by Singapore-resident companies under section 44 does not have the character of tax paid by the shareholder, it is difficult to see what legal justification there is for allowing the

1 The forerunner of the present section 44.
2 (1958) 7 A.I.T.R. 182 at 187 (*per* Dixon C.J., McTiernan and Williams JJ.).
3 *Ibid*., at 188, 189 (*per* Dixon C.J., McTiernan and Williams JJ.).
4 *Ibid*., at 195 *(per* Kitto J.).
5 (1959) 7 A.I.T.R. 607.
6 (1966) 10 A.I.T.R. 105.

shareholder to "cash" his tax credit under section 93 (1).[7] We may note that, as far as the United Kingdom is concerned, explicit provision is made for the tax credit arising on payment of a "qualifying distribution" (a dividend is a "qualifying distribution") to be set off against tax due, and, in the event of any excess of credit over tax due, paid over to the shareholder.[8]

On the other hand, it may be pointed out that section 89(1) of the Income Tax Ordinance, 1947 — the original section dealing with repayment of tax — clearly contemplated that tax deducted on payment of a dividend was to be considered as tax paid by the recipient of that dividend. In the first place, proviso (ii) to section 89(1) was inserted because it was assumed that a taxpayer who received dividends could prima facie claim to have the tax credit on them actually paid to him, and the purpose of the proviso was therefore to prohibit such a claim. Secondly, the language of the proviso itself supposes that the recipient of a dividend "has paid tax by deduction in accordance with section 40 of this Ordinance".[9] However, section 28 of the Income Tax (Amendment) Ordinance, 1948 deleted this proviso. The precise effect of this amendment is uncertain: either it nullified the idea or assumption behind the proviso, or it simply abolished the prohibition contained in the proviso while leaving the basic assumption untouched. In other words, it could be argued (on the first interpretation) that the amendment merely recognised that the proviso was superfluous in that the taxpayer could not in any case make a claim under the main part of section 89(1) for payment of any tax credit due on his receipt of dividends, and its deletion was thus a mere formality designed to streamline the subsection. The second interpretation implies that the assumption inherent in the proviso still holds good, and all that has happened is that the prohibition against the payment of excess tax credit on dividends has been removed. Since either interpretation is defensible, and since there is much force in the observations of the Australian High Court in *Hughes* v. *F.C.T.,* it is submitted that, in order to clarify the law, a specific provision authorising the payment of excess tax credit due on dividends is highly desirable: such a provision can be easily appended to the existing section 46 without necessitating the complete re-drafting of that section.

## *THE ECONOMIC EXPANSION INCENTIVES (RELIEF FROM INCOME TAX) (AMENDMENT) ACT, 1975*

As part of its economic development plan to achieve and sustain

[7] In fact, in *Hughes* v. *F.C.T.*, the Malayan authorities apparently did pay the excess tax credit over to the taxpayer: see paragraph 7 of the Case Stated, 7 A.I.T.R. 182 at 185.

[8] Finance Act, 1972, section 86(4).

[9] The actual wording of the relevant part of section 89(1) of the Ordinance (No. 39 of 1947) is as follows:

> "If it be proved to the satisfaction of the Comptroller that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. .
> Provided that —
> . . . (ii) where any person has paid tax by deduction in respect of a dividend in accordance with section 40 of this Ordinance [now section 44 of the Income Tax Act] he shall not be entitled by virtue of this section to any relief greater than that provided by section 42 of this Ordinance [now section 46 of the Act]."

an annual growth rate of 15% during the 1970's — now a Utopian goal since the momentous events of 1973—the Government has persevered in its drive to promote the establishment of high-level technology and export-oriented industries here. From the viewpoint of fiscal incentives, the Economic Expansion Incentives (Relief from Income Tax) Act offers a package of income tax concessions in relation to five specified types of business activity. The last amendments to the Act prior to 1975 took place in 1970.[10] In 1973, the Minister announced that there was no need at the time to amend the legislation on tax incentives, since these were considered quite adequate.[11] By 1975, however, the Republic's manufacturing and export strategy had entered a different phase, and the Addendum to the Presidential Address delivered at the opening of the Second Session of the Third Parliament on 21st February, 1975 presaged an extension of existing incentives along the following lines:[12]

> We will offer an attractive package of fiscal incentives for new types of industries such as machine tools, precision instruments and petrochemicals. Pioneer industry tax exemption will be extended from five to ten years for the most deserving industries.

In his 1975 Budget Statement, the Minister indicated that his Ministry was examining the incentives legislation to see whether any additional incentive was required to further assist the promotion of desirable industries in Singapore. Besides the extension of the tax relief period for pioneer industries mentioned in the Addendum above, he proposed to remove the $1 million fixed asset requirement for pioneer status in order to benefit "small but especially high quality product industries [which] provide supporting services" to larger pioneer industries.[13] There followed on 29th July, 1975 the introduction into Parliament of the Economic Expansion Incentives (Relief from Income Tax) (Amendment) Bill, which was passed shortly afterwards on 19th August, and received the President's assent on 25th August. The Act came into operation on 1st September.[14]

This short Act (it contains a mere five sections) implements what was previously announced, and concentrates on one of the five types of business activity covered by the principal Act, viz. pioneer enterprises. In this connection, it removes the financial barrier previously preventing some companies from attaining the status of pioneer enterprise, and increases the tax relief period of such enterprises. The main fiscal advantages of pioneer enterprise status are that the pioneer income of the company (the reliefs given under the principal Act apply only in relation to companies) is exempt from income tax;[15] dividends paid out of such exempt income are not subject to the operation of section 44 of the Income Tax Act;[16] and such dividends,

[10] Act 31 of 1970. These amendments are incorporated into the main text of Cap. 135.
[11] *Hansard,* Vol. 32, col. 468.
[12] *Ibid*., Vol. 34, col. 9.
[13] *Ibid*., Vol. 34, cols. 181, 182.
[14] See the Economic Expansion Incentives (Relief from Income Tax) (Amendment) Act (Commencement) Notification, 1975 (G.N. No. S 216/75), published pursuant to *section 1*.
[15] Section 13.
[16] Section 14(8).

provided they are not paid in respect of shares of a preferential nature, are also exempt from tax in the hands of the recipient.[17]

Under the pre-1975 law, only companies which had incurred or were intending to incur "fixed capital expenditure" of not less than $1,000,000 could apply to the Minister for approval as pioneer enterprises. *Section 2(a)* now abolishes this requirement. The policy behind the amendment is to encourage the establishment of small but highly specialised supporting industries which supply parts and components to larger manufacturing plants, and which often involve sophisticated technology and skills, although because of their smaller size their fixed capital investment would not reach $1,000,000.[18] As a necessary consequence of this amendment, section 5(5) (containing the definition of "fixed capital expenditure") has been deleted by *section 2(b).*

Prior to the 1975 Act, the tax relief period of a pioneer enterprise was fixed at five years. Now, by virtue of *section 3,* the Minister is given a discretion to extend the tax relief period for up to ten years. It was found that the more sophisticated types of industries which the Government was hoping to attract to Singapore needed a longer gestation period than the previous five-year relief period before they became profitable, and consequently a longer tax relief period was requisite to encourage such companies to invest here.[18]

*Section 4* substitutes a new section 10(3), which is rendered necessary by the deletion of section 5(5) (defining "fixed capital expenditure"). The importance of a pioneer enterprise incurring the amount of fixed capital expenditure outlined in section 10(2) resides in the ascertaining of its pioneer income (or, to use the terminology of the principal Act, the "income in respect of its old trade or business", as defined in section 3(1) ). If the amount of expenditure of the pioneer enterprise is less than that provided in section 10(2) (*a*) and (*b*), then the normal capital allowances (other than the accelerated allowances granted under section 19A of the Income Tax Act) *must* be taken into account in computing the pioneer income of the enterprise. The consequence is that the amount of exempt income under section 13 is reduced, as well as the amount of tax-free dividends that may be declared under section 14. However, where the pioneer enterprise incurs a fixed capital expenditure of not less than $1,000 million or, if less, not less than $150 million and the conditions in section 10(2) (*b*) (i) and (ii) are satisfied, then all capital allowances will be deemed to have been incurred *after* the expiration of the tax relief period. Additional relief is thus provided to such pioneer enterprises as qualify.

*Section 5* amends section 25(1) (*b*), and is a consequence of the amendment of section 6. Section 25(1) (*b*) deals with an export enterprise (another category of companies which are granted tax incentives under the principal Act) which is also a pioneer enterprise. The tax relief period of this enterprise was previously "such period as together with its tax relief period as a pioneer enterprise will extend in the

[17] Section 14(3).

[18] Statement by the Minister during the second reading of the Bill: *Hansard,* vol. 34, col. 1229.

aggregate to eight years." As the former period of relief of a pioneer enterprise was fixed at five years, this provision meant in practice that the tax relief period of an export enterprise which was also a pioneer enterprise was a period of three years dating from the expiration of the five-year relief period. Since the new section 6 makes it clear that the period of relief of a pioneer enterprise may vary from five to ten years, it seemed more logical to state the period of relief of an export enterprise which also qualified as a pioneer enterprise in simpler terms, as the new section 25(1)(*b*) now does.

*THE INCOME TAX (AMENDMENT NO. 2) BILL*

This Bill was introduced in Parliament on 11th November, 1975 to further modify the Income Tax Act, and contains eleven clauses. The more important amendments cover four areas, two of which were foreshadowed in the 1975 Budget Statement:

1) relief for expenditure on motor cars;[19]
2) taxation of the profits of a non-resident shipowner, charterer or air transport operator;[20]
3) earned income relief for individuals over fifty-five and sixty years of age;[21] and
4) withholding tax.[22]

*Clauses 5* and *6* seek to give effect to the Minister's proposal that "under income tax legislation, the capital allowance allowed for company cars registered after today [i.e. 3rd March, 1975] will be restricted to a maximum of $15,000."[23] Allowances under section 19 for capital expenditure on cars apply only to such cars as are provided "for the purposes of [the taxpayer's] trade, profession or business". The proposed section 19(2A) will require that initial and annual allowances be computed on the basis of the actual capital expenditure incurred on the car (i.e. the purchase price) or $15,000, whichever is the less. There is a special definition of motor cars to which these provisions apply.[24] A consequential amendment will be effected to section 20 to provide for the calculation of the amount of a balancing allowance or balancing charge, on the assumption that initial and annual allowances are given on a maximum capital expenditure of $15,000.[25] If the taxpayer were to forego his entitlement to capital allowances under section 19, and instead claim relief on a replacement of the car in accordance with section 14(1)(*c*), relief under that paragraph would be likewise restricted to a maximum of $15,000.[26] In addition, *clause 4(b)*, which proposes new subsections (3) and (4) to section 14, limits the deductibility of income expenditure (e.g. the cost of road tax, petrol, repairs, insurance) on motor cars, as defined in the proposed section 14(4)—the same definition contained in the proposed section

19 *Clauses 4(b)*, *5* and *6*.
20 *Clauses 7* and 9.
21 *Clause 8*.
22 *Clauses 2, 10* and *11*.
23 1975 Budget Statement: *Hansard,* Vol. 34, col. 192.
24 The proposed section 19(2C).
25 See *clause 6*.
26 Proviso to the proposed section 14(3) : see *clause 4(b)*.

19(2C). Again, the underlying idea is that relief should be restricted to the same extent as if the value of the car in question did not exceed $15,000. If the car in fact cost more than $15,000, the expenditure allowed under section 14(1) would be limited to a fraction of the actual expenditure in accordance with the following formula:

$$\frac{15{,}000}{\text{capital expenditure on car}} \times \text{outgoings and expenses actually incurred}$$

The second category of contemplated amendments is based on the principle that there should be some reciprocity in the tax treatment of Singapore-resident shipowners and charterers by foreign governments. *Clause 7* thus allows the Minister to compute the taxable profits of a non-resident shipowner or charterer "in such manner as may be substantially similar to that adopted by the tax authority of [a] foreign country" of which that non-resident *is* a resident, if that tax authority determines the profits of a Singapore-resident shipowner or charterer in a manner less favourable to the latter than that laid down in section 27(4); and *clause 9* gives the Minister a discretion to tax a non-resident shipowner, charterer or air transport operator at a higher rate than that prescribed for non-residents by section 43(*b*),[27] if the government of that non-resident taxes a Singapore-resident shipowner, charterer or air transport operator at a higher rate.

The third category implements the Minister's previously announced intention to increase earned income relief for those over fifty-five and sixty years of age,[28] while reaffirming the Government's repeated refusal to raise the ceiling on this relief (and other personal reliefs as well) for all members of the public generally, since, in the Minister's words, "it really comes back to the question of whether I should give additional tax relief to every taxpayer [and] I am afraid that would not be possible."[29]

The main thrust of amendments in the fourth area represents a considerable tightening up of the provisions dealing with the deduction and collection of withholding tax under section 45. This section is completely rewritten to clarify the meaning of a "payment" of interest; to require the payer to give notice of a deduction of withholding tax "immediately" on deduction, and to pay that tax within seven days of payment of the interest; to create an offence with stringent penalties, compoundable only at the instance of the Comptroller, if the required notice is not given within seven days after tax has been deducted; to provide for further penalties for late payment of withholding tax (which penalties may be remitted wholly or in part by the Comptroller "for any good cause"); and finally to allow the Comptroller to extend the period of time within which notice and payment must ordinarily be made, in the case of a bank or financial institution.

## *CONCLUSION*

As is evident, the various legislative changes and proposed amendments do not radically alter the basic income tax structure of the

[27] Currently 40%.
[28] 1975 Budget Statement: *Hansard,* Vol. 34, cols. 192, 193.
[29] Debate on this issue following the 1975 Budget Statement: *ibid*., Vol. 34, col. 448.

Republic. What they do is to express the policymakers' response to contemporary social and economic problems within the limitations of the given tax system. In addition, the amendments indicate the Government's continuing preoccupation with and emphasis on commercial and financial activities, which are encouraged for the returns they are expected to yield. While it cannot be said that one of the cornerstones of Singapore's present fiscal policy is to wield the tax instrument to accomplish a redistribution of the nation's wealth, the Government has moved to curtail allowances and reliefs which unduly favoured those in the upper income bracket, and which may have been considered abused or over-generous. And what of taxes for the future? We may conclude with a reference to the Minister's recent remarks in Parliament on this point:[30]

> There are a number of other suggestions for new taxes, and I am very grateful to Members for even thinking about them. Some of these are for capital gains tax (capital gains in the stock market perhaps) and increased taxes on companies. I need only say that these are among the very hardy perennial suggestions which have been made to us and which we have consistently rejected because they are against our ideas on how our economy should develop. If we really do want to have multi-nationals and to have them manufacture in Singapore, and if we want to compete in the way that we have done in the past, then these ideas are not really feasible.

## *POSTSCRIPT*

Since the writing of this article, the Income Tax (Amendment No. 2) Bill was passed without amendment by Parliament on 20th November, 1975, and assented to by the President on 29th November. The Income Tax (Amendment No. 2) Act, 1975[31] came into operation on 2nd December.

C. A. YING*

[30] During the debate following the 1975 Budget Statement: *ibid.*, Vol. 34, col. 449.

[31] Act No. 37 of 1975.

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