

MALAYSIAN INCOME TAX

2nd Ed. by

Awther Singh, assisted by Jaginder Singh.

(Singapore, Law Book Company of Singapore and

Malaysia, 1974: XX and pg. 544. \$72.00)

This is the second edition of the book originally published in November 1972. The author claims that the whole of Part A of the book which deals with the law has been entirely rewritten and this has been made possible by the fruitful relationship of the author with Mr. Jaginder Singh of the Faculty of Law, University of Malaya. This review deals mainly with Part A – the legal part of the book. It must be said at the outset that the second edition is a vast improvement on the first edition. The book provides a clear summary of the legal provisions relating to income tax in Malaysia and can be read with profit by all students and practitioners of the law.

One major criticism of the book is that not enough significance is given to the term "Malaysia". At page 3 of the book it is stated quite wrongly that "Malaya till 1957 [was] ruled by the United Kingdom" but while Singapore is mentioned, Sabah and Sarawak are ignored. At page 10 it is stated that the Federal Court is bound by its own decisions and by the decisions of the Singapore Court of Appeal prior to 1965, again ignoring the position relating to the decisions of the Court of Appeal of Sarawak, North Borneo and Brunei. On the same page the impression given is that Malaysia has only one High Court and clearly account has not been taken of the fact that there is a High Court for the Borneo States. At page 27 it is stated that the law of contract in Malaysia is governed by the Contracts (States of Malaya) Ordinance, 1952, which is not only incorrect, but ignores the position of Sabah and Sarawak and also of Penang and Malacca. It was the Contracts (Malay States) Ordinance, 1950 that was applicable to the Malay States – perhaps the author was prophesying for the Ordinance has now been extended to the whole of Malaysia and is now known as the Contracts Act, 1950.

The doctrine of *stare decisis* as it applies to Malaysia is summarised, though very inadequately, at page 10 but throughout the book there are references to cases, where it is not made clear whether they are decisions in or from Malaysia or decisions in other countries. In particular Singapore cases have been freely cited without specific reference to the fact that they are Singapore cases. Thus at page 205, the decisions of the Singapore Board of Review are cited as "local" cases. At page 67 the decision of the

Singapore Income Tax Board of Review in *E. Finance C. v. C.I.T.* is cited as a decision of the Special Commissioners. While the decisions of the Board of Review seem to be freely cited in the book there appear to be a number of decisions of the High Court in Singapore which are not. *C.I.T. v. D.E.F.*, a decision of the Singapore Court of Appeal is duly cited at pages 43 and *X v. C.I.T.* is cited (although without indicating that it is a Singapore case) at page 210. But what about *Comptroller of Income Tax v. A.B.* (1960) M.L.J. 55 (bonus share), *In re a Taxpayer* (1956) M.L.J. 216 (Deductions from employment income), *X and Co. v. Comptroller of Income Tax* (1956) M.L.J. 43 (Trust for Charitable Purposes)?

Strangely enough *In re a Taxpayer* is described at page 87 of the book as a Singapore case, when it is the decision of the Court of Appeal of the Federation of Malaya. The term "solicitor and advocate" in the same page is unorthodox and footnote 39 should refer to page 254 of the report.

At times it would appear that the doctrine of *stare decisis* is ignored. Thus at pages 205-206 three cases dealing with the subject of "Revenue Repair or Capital Improvement" are cited but it is not made clear that one of them, that is, *C.I.T. v. X Rubber Co. Ltd.* is a Malaysian case.

The authors are to be congratulated on anticipating the decision of the Privy Council in *H. v. Comptroller of Inland Revenue* at page 124. The decision of the Privy Council is now reported at [1974] 2 M.L.J. 135. It might also be noted that the decision of Chang Min Tat J. in *B. v. Comptroller of Inland Revenue* has been affirmed by the Federal Court (see [1974] 2 M.L.J. 101).

Perhaps in a future edition more references could be made to Australian and New Zealand cases on Income Tax. *Ward & Co. v. C.I.T.* a Privy Council case on appeal from New Zealand is referred to but it is difficult to understand what is meant by the passage at page 218 - "While agreeing that the above case is authority for the general proposition that 'for the purposes of trade' is wider than 'for the production of gross income', the author would submit that the specific statutory provisions in *Ward & Co.*'s case is absent in Malaysia by virtue of differences in the tax structure".

At pages 146-154 of the book the authors deal with the subject of company tax and dividends. It would have been helpful if the authors had explained how the present position in Malaysia is different from the position under the former Income Tax legislation in the Federation and the position in Singapore and in particular why the Privy Council cases of *Government of the Federation of Malaya v. A. Omnibus Co. Ltd.* and *Sim Lim Investment Ltd. v. Attorney-General* are not applicable in Malaysia.

If the reviewer can be allowed to trespass a little into Part C of the book, he would like to suggest that Mr. Jaginder Singh be asked to extend his "fruitful relationship" to this Part of the book. The section on "Case stated" (page 461) and on "Recovery by Suit" can well profit from the

lawyer's touch. At present one is disappointed by the almost complete lack of reference to the many interesting decided cases on the topics.

The book is well-written but at page 87 there is the odd sentence, "hence the Chair must have come under existence before X filled it" and at page 7 should not a typical example be "is" rather than "are".

Unfortunately, there are a number of misprints, some of which are set out below:—

- "Butterose J." should be Buttrose J. at pages 43 and 44.
- "exhausitive" at page 82 should be "exhaustive".
- "cause" at page 88 should be "canon".
- "principal" at page 93 should be "principle".
- "Dawning M.R." at page 110 should be "Denning M.R.".
- "CONVETIBLE" at page 130 should be "CONVERTIBLE".
- "DIVIDENTS" at page 143 should be "DIVIDENDS".
- "on sense" at page 146 should be "no sense".
- "pruposes" at page 219 should be "purposes".

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THE PENAL CODES OF SINGAPORE AND THE STATES OF MALAYA

Volume 1 by Koh Kheng Lian and Myint Soe
[Singapore; Law Book Company of Singapore and Malaysia,
1974; XV and 255 pp. \$54.00]

This book by two members of the Faculty of Law, University of Singapore, is to be welcomed and as Mr. David Marshall says in his Preface it is hoped that this book will encourage other academic lawyers in Singapore and in Malaysia.

The present work is the first volume and apart from Chapter XVI which deals with homicide by negligence, it is concerned mainly with the subject of *mens rea* and the general and special exceptions in the Penal Code. It is perhaps unfortunate that the authors have confined their attention only to the Penal Codes of Singapore and the States of Malaya and therefore left out of account the Penal Codes of Sabah and Sarawak. This somewhat reduces the value of the work for students and practitioners in Malaysia. However, some cases from Sarawak, Sabah and Brunei are included in the book.