QUESTION 1: My company is in the business of providing engineering consultancy services in Malaysia. For certain projects, my company engaged the services of foreign engineering consultancy firms to support our projects. When making payments to these foreign firms for technical services performed, we have withheld the 10% withholding tax from the gross sum and paid the balance of 90% to the foreign firms. How then does the abolition of the 10% withholding tax reduce the cost of doing business when instead of paying 90% of the gross sum to the foreign firms, my company now pays the full sum without the need to withhold the 10% tax? The cost remains the same.

Answer: Firstly, the abolition of the 10% withholding tax only applies to payments where the services are performed outside Malaysia. If the services of the foreign firms are performed in Malaysia, then your company is still required to withhold the 10% tax and pay it to the tax authorities. In the past, regardless of where the services were performed, the foreign firms suffered the 10% withholding tax when they received payments from your company.

However, in many instances, contractual agreements between local and foreign companies provide that local companies are required to pay foreign companies net of any withholding taxes. This means that local companies are required to pay the full sum to the foreign companies and on top of that, local companies will have to bear the 10% withholding tax to be paid to the tax authorities, thereby increasing their cost by 10%. This additional cost is inevitably passed on to the local companies’ customers.

Question 2: I understand that as a taxpayer, I must keep certain documents for a period of seven years. Is my understanding correct? If my understanding is correct, I would appreciate your response to the following questions: 1. What sort of documents shall be kept by me? 2. Can I keep the documents in electronic form? 3. Since I travel quite often, must the records be kept in Malaysia?

Answer: Yes. Under the proposed amendment, it is your duty to keep and retain in safe custody sufficient documents for a period of seven years from the end of a year of assessment for the purposes of ascertaining your chargeable income and tax payable. Prior to the proposed amendment, only persons who carry on business are required to keep records.

1. The documents to be kept are statement of income and expenditure; and invoices, vouchers, receipts and other documents as are necessary to verify the particulars in your tax return.
2. Yes, you can keep your documents electronically but in an electronically readable form and shall keep the documents in such a manner as to enable the documents to be readily accessible and convertible into writing.
3. The original documents are kept in a manual form and subsequently converted into electronic form, those documents prior to the conversion must be kept in their original form.

Question 3: I am an expatriate posted to a regional office in Malaysia and have been paying Malaysia tax on my full annual income even though I travel a lot in the region. The proposed amendment to tax only income that is apportioned to Malaysia based on the number of days of presence in Malaysia will make it more tax beneficial for me. However, as my family is here in Malaysia with me, I spend more non-workdays in Malaysia than in other jurisdictions that I cover in my line of work. Would that not be more adverse to me tax-wise than if the apportionment of income is based on workdays?

Answer: Any income accrued in or derived from Malaysia is taxed, such as income from an employment in Malaysia, including any income attributable to duties performed outside Malaysia that are incidental to an employment in Malaysia.

Under the proposed amendment to promote the establishment of operational headquarters (OHQ) and regional offices (RO) in Malaysia, expatriates employed in OHQs and ROs are taxed only on income that is apportioned based on time spent in Malaysia.
Malaysia.

Yes, the apportionment of income based on actual presence (also known as the days-in-days-out, or “DIDO”, approach) will result in more income being taxed in Malaysia than if it is based on workdays. However, under Malaysian legislation, income attributable to paid leave in connection with the exercise of an employment in Malaysia is also taxable.

Furthermore, under this approach, the determination of an individual’s presence will be objectively based on the dates of entry into and exit from Malaysia, thus preempting subjective contention over what would constitute workdays for this purpose. This proposal puts Malaysia on similar footing with Singapore that also applies the DIDO approach based on actual presence rather than workdays.

However, as these expatriates’ income would still be subject to monthly schedular tax deductions (STD), the tax authorities will need to provide guidelines on how the STD should be determined in such cases.

**Question 4:** I am the owner of three residential houses currently. I am residing in one house whereas I use the other two houses, which are situated in a hill resort and beach front respectively as my holiday retreats. I was told by my tax agent that I need to pay tax on the other two houses used as holiday resorts despite not receiving any rental income. Why is this so? Please also clarify the position after the recent Budget 2003 announcement.

**Answer:** Under the existing Section 11 of the Income Tax Act, 1967, a person (including clubs and trade associations) who occupies a premises otherwise than solely for the purposes of a business, the occupation is deemed to be a source of income of himself from that occupation. Under the same section, a person will be deemed to occupy premises as long as he has a right to occupy those premises. The notional income from the occupation of such premises will be an amount equal to the rateable value or in the absence of such value, the economic rent of the premises for the relevant period.

Section 128 of the Act allows an individual (not clubs and trade associations) to claim for a relief for one premise. The claim must be made in the tax return to enjoy the exemption. As such, your tax agent was right in advising you that you would be required to pay taxes in respect of two other houses.

It is now proposed that Section 11 and Section 128 be deleted. The deletion of these sections from the Income Tax Act, 1967 means that premises owned by persons (including clubs and associations) for non-business purposes will no longer be deemed to be a source of income and thus no income need to be attributed to such properties.

**Question 5:** Currently, our company is imposed with sales tax uplift. With the proposed sales tax valuation to be in accordance with the WTO Valuation System, will existing sales tax uplifts be abolished with effect from Jan 1, 2003?

**Answer:** Yes, if the sales tax valuation is to be in accordance with the WTO Valuation System. However, the transaction value could be subject to mandatory adjustments as those under the WTO Valuation System.

**Question 6:** It was highlighted in the Budget report “service tax imposed on professional services rendered within the same group to be exempted.” Can you please clarify the following:

1. Does “group” in the above statement refer to group of companies, i.e. service rendered between subsidiary and parent companies?
2. Does “professional services” in the above statement include advertising?

**Answer:** 1. “Group” is not defined in the 2003 Budget speech, but it would seem that subsidiaries and parent company would fall under the term “companies within the same group.”

2. Based on the 2003 Budget speech, the applicable professional services would be those provided by the following professionals: public accountants; advocates and solicitors; engineers; architects; surveyors including valuers, assessors and real estate agents; consultants; and management service providers.

Advertising services were not included as part of the professional services mentioned in the 2003 Budget speech.